

Title 8

HEALTH AND SAFETY

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Livermore Municipal Code

Chapter 8.08

SOLID WASTE MANAGEMENT

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Article I. Introduction and Definitions

8.08.010 Legislative policy.

The city council does find and determine that the storage, accumulation, collection and disposal of solid waste is a matter of great public concern, in that improper control of such matters creates a public nuisance, can lead to air pollution, fire hazards, illegal dumping, insect breeding and rat infestation and other problems affecting the health, welfare and safety of the residents of this and surrounding cities.

The city council also finds that a recyclable materials and compostable materials collection and processing program is necessary for the city to achieve the diversion goals mandated by the Integrated Waste Management Act of 1989 (Public Resources Code Section 40000, et seq.) and that failure to comply with this mandate exposes the city and its residents to substantial fines and additional costs. (Ord. 1816 § 2, 2007)

8.08.020 Definitions.

For the purpose of this chapter, the following definitions apply:

“Animal waste” means any carcass, manure, fertilizer, or any form of solid excrement produced by any and all forms of domestic or commercial livestock such as cattle or horses, but not including household pets.

“Bin” means a detachable solid waste or recyclable materials container used in connection with commercial/industrial premises with a one to seven cubic yard capacity, equipped with a lid, and designed for mechanical pickup by collection vehicles.

“Cart” means a wheeled plastic container with varying capacities of 20, 32, 64, 96 or 101 gallons (or similar sizes as approved by the city manager)

equipped with a hinged lid designed for mechanical pickup by an automated or semi-automated collection vehicle.

“City” means the city of Livermore, a municipal corporation, and all the territory lying within the municipal boundaries of the city as presently existing or as such boundaries may be modified.

“City council” means the mayor and city council of the city of Livermore.

“City manager” means the city manager of the city of Livermore or the city manager’s designee.

“Commercial occupant” means every tenant or person who is in possession of, or has the care and control of, a place of business.

“Commercial premises” means a place used primarily for business purposes.

“Compostable materials” means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees, food scraps and similar materials that are separated, set aside, handled, packaged or offered for collection by the waste generator in a manner different from solid waste.

“Composting” means a method of treatment in which organic scraps are biologically decomposed under controlled, aerobic or anaerobic conditions to produce a product that can be reused.

“Construction and demolition debris” means used or discarded materials (not including solid waste) removed from premises during construction or renovation of a structure resulting from construction, remodeling, repair or demolition operations on any pavement, house, commercial building, or other structure. (See also Chapter 15.28 LMC, Construction and Demolition Debris.)

“Container” means a cart, bin, debris box, or other device to contain materials.

“Curbside” means the location for placement of carts by single-family residential customers and some multifamily residential customers, which shall be on the street against the curb. (See LMC 8.08.040(E) and (F).)

“Debris box,” sometimes known as a “roll-off” or “drop” box, means a wheeled or sledged container or compactor, generally six to 50 cubic yards in size, suitable for the storage and collection of commercial or industrial solid waste or recyclable materials that is serviced by a roll-off truck.

“Designated waste” means nonhazardous waste which may pose special disposal problems because of its potential to contaminate the environment and

which may be disposed of only in Class II disposal sites or Class III disposal sites pursuant to a variance issued by the California Department of Health Services pursuant to applicable landfill permits. "Designated waste" consists of those substances classified as designated waste by the state of California, in California Code of Regulations Title 23, Section 2522.

"Disability" means (1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

"Disposal" means the final disposition of solid waste at a landfill or other facility approved by the city manager. Disposal does not include the use of compostable materials as alternative daily cover (ADC) so long as city and state regulations consider ADC use of compostable materials as diversion.

"Disposal site" means the solid waste facility or facilities approved by the city manager for the ultimate disposal of solid waste.

"E-waste" means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, mice, etc.), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices.

"Food scraps" means kitchen parings and leftovers including fruit, vegetables, cheese, meat, bones, poultry, seafood, bread, rice, pasta, etc.; coffee grounds, coffee filters and tea bags; food-soiled paper products including napkins, towels, egg cartons and uncoated plates and cups; cut flowers and herbs; other organic matter generated in the preparation or consumption of meals.

"Franchisee" means a person or business who has entered into a franchise agreement with the city council pursuant to Article III of this chapter for the collection of solid waste, recyclable materials, and compostable materials.

"Hazardous waste" means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the state of California in Health and Safety Code Sections 25110.02, 25114 and 25117 or in future amend-

ments to or recodifications of such statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act (42 USC Section 6901, et seq.), and all future amendments thereto and all rules and regulations promulgated thereunder.

"Home composting" means the on-site recycling of compostable materials generated on residential premises.

"Household hazardous waste" means hazardous waste generated at residential premises within the city.

"Infectious waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5, or needles generated at residential sites.

"Litter" means any quantity of solid waste, recyclable materials, or compostable materials which is not placed in a container.

"Materials recovery and processing center" means a permitted solid waste facility where solid wastes, recyclable materials or compostable materials are sorted, separated, screened or otherwise processed by hand or by use of machinery for the purpose of recycling or composting.

"Multifamily" means any residential complex, other than a single-family premises, used for residential purposes, which has centralized solid waste and recyclable materials collection service for all units in the building and may be billed as one address. Some multifamily premises have cart service.

"Nonputrescible waste" means solid waste which is not subject to decomposition by microorganisms.

"Occupant" means and includes every tenant or person who is in possession of, is the inhabitant of, or has the care and control of, an inhabited residence or a place of business.

"Owner" means the person holding legal title to the land or building.

"Permittee" means any person authorized by a city of Livermore permit to collect recyclable materials and/or construction and demolition debris.

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“Person” means any individual, firm, association, organization, partnership, corporation, business, trust, joint venture, the United States, the state of California, the county of Alameda, and special purpose districts.

“Premises” means any land or building in the city where solid waste, recyclable materials, or compostable materials are generated or accumulated.

“Putrescible waste” means solid wastes originated from living organisms and their metabolic waste products and from petroleum, which contains naturally produced organic compounds and which are biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide and other simpler organic compounds.

“Recyclable materials” means those nonhazardous residential, commercial, or industrial materials or by-products which are set aside, handled, packaged, or offered for collection in a manner different than solid waste, for the purpose of being reused or processed and then returned to the economic mainstream in the form of commodities. No discarded material shall be considered to be recyclable material unless it is separated from solid waste and compostable materials. Recyclable materials may include, but are not limited to, newspaper, mixed paper, glass containers, metal and aluminum cans, plastic bottles, corrugated cardboard, used motor oil, and construction and demolition debris managed in a manner consistent with an approved waste management plan, as that term is defined in Chapter 15.28 LMC, Construction and Demolition Debris.

“Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting recyclable materials (as defined above) and returning them to the economic mainstream in the form of raw materials for new, reused or reconstituted products. Recycling does not include transformation as defined in Public Resources Code Section 40201.

“Residential premises” means a site occupied by a building zoned for residential occupation or mixed use and residential occupation where solid waste, recyclable materials, or compostable materials are generated or accumulated.

“Residential solid waste” means solid waste originating from single-family or multifamily dwellings.

“Single-family” means each unit used for or designated as a single-family premises, including each unit of a duplex, triplex, townhouse or condominium which receives individual solid waste, recyclable materials, and/or compostable materials collection services.

“Solid waste” means all solid, semi-solid and associated liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes and dewatered, treated or chemically fixed sewage sludge which is not a hazardous material. “Solid waste” does not include the following:

1. Hazardous material;
2. Infectious waste, as defined in this chapter;
3. Special waste, as defined by Title 14, California Code of Regulations, Section 18722(j)(8);
4. Recyclable materials, as defined in this chapter;
5. Compostable materials, as defined in this chapter;
6. Construction and demolition debris, as defined in this chapter, if the material is recycled;
7. Designated waste; and
8. Other material deemed unacceptable by applicable law and/or permit conditions.

“Solid waste” also means the residue from a materials recovery facility.

“Source-separated” means the segregation from solid waste, by the waste generator, of materials designated for separate collection for some form of materials recovery or special handling.

“Specialty recyclable material” means material that can be or will be collected for purposes of recycling by any person operating under a recyclable materials permit issued by the city in accordance with this chapter. Such specialty recyclable material includes, but is not limited to, scrap metal, construction and demolition debris, high-grade paper (including mixed paper from offices), pallets, and plastic film.

“Transfer station” includes those facilities utilized to receive solid waste, temporarily store, and transfer the solid wastes directly from smaller to larger vehicles for transport.

“Transformed” means incinerated, pyrolyzed, distilled, gasified or biologically converted other than composted.

“Waste generator” means any person, as defined by Section 40170 of the Public Resources Code, whose act or process produces solid waste as defined in Public Resources Code Section 40191, recyclable materials or compostable materials or whose act first causes solid waste to become subject to regulation. (Ord. 1910 §§ 1, 2, 3, 2010; Ord. 1816 § 2, 2007)

Article II. General Regulations

8.08.030 Solid waste collection and disposal and recyclable materials and compostable materials collection and processing.

A. Collection and Disposal of Solid Waste. The owner or occupant of each premises is required to contract with the city’s franchisee for removal of all solid waste accumulated on such premises and shall pay for such removal at the rates established by Article 8 of the franchise agreement and approved by the city council. Arrangements with the franchisee shall be made by owner or occupant for the collection of solid waste, recyclable materials and compostable materials, and such arrangements shall specify the location of the premises, solid waste container type and sizes, and frequency of collection. In the event the owner elects to have the occupant of its premises take responsibility for contracting with the franchisee for collection service and the occupant fails to make arrangements for collection or fails to pay for collection services provided by franchisee, the responsibility to contract and pay for collection services shall become the owner’s responsibility.

It is mandatory that all residents subscribe with franchisee for solid waste cart collection services, recyclable materials and compostable materials collection services.

B. Frequency of Collection. All solid waste created, produced or accumulated in or about a dwelling, house or place of human habitation in the city shall be placed in a container and removed from the premises and disposed of by the franchisee at least once a week. All solid waste created, produced or accumulated at hotels, restaurants, boardinghouses or other places of business situated in the city shall

be placed in bins or debris boxes and removed from the premises at least once a week by the city’s franchisee. The Alameda County health department may require a greater number of collections per week. Each day’s violation of this section shall be treated and considered as a separate and distinct offense.

C. Exceptions. Following are the exceptions to the collection requirement under subsection A of this section or to the frequency of collection requirement under subsection B of this section, or both:

1. Frequency of Collection of Debris Box. Nonputrescible waste segregated for collection in a debris box.

2. Residential Solid Waste Collection Service. An exception to regular solid waste collection service shall be granted by the franchisee, upon request by the owner or occupant, if the owner or occupant meets one of the following criteria:

a. No food is prepared or consumed on the premises; or

b. No solid waste of any kind is being generated on the premises.

In all cases where an exception is granted, the premises must at all times be kept in a sanitary condition which does not cause a nuisance to others. The occupant must consent to on-site inspection of solid waste disposal facilities by the city manager in order to qualify for the solid waste service exemption. If the circumstances which allowed the exception should change, the owner or occupant shall then initiate regular solid waste collection in accordance with the provisions of this section. The city manager or franchisee may require reauthorization of such exception from time to time.

D. Collection of Recyclable Materials and Compostable Materials. All recyclable materials and compostable materials that are source-separated for collection by an occupant of residential premises in the city shall be collected from the premises at least once each week. Nothing in this chapter shall prohibit the waste generator of recyclable materials and compostable materials from separating such materials from their solid waste and placing such material for collection by a permittee that compensates owner for the recyclable materials and compostable materials. As stated in subsection A of this section, occupants of residential premises that receive solid waste collection ser-

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vice using carts shall be required to contract with and pay franchisee for collection of recyclable materials and compostable materials. The type of recyclable materials and compostable materials that waste generator may place in containers for collection by franchisee shall be specified by franchisee and waste generators shall comply with franchisee's requirements.

E. Ownership of Materials. Upon the placement of solid waste, recyclable materials or compostable materials in a container for collection by franchisee or permittee, the solid waste, recyclable materials and compostable materials shall become the property of franchisee or permittee.

Nothing in this chapter prevents a commercial/industrial business owner or resident from disposing of solid waste or recyclables generated in or on their own premises, with their own vehicles, in lieu of availing themselves of the services of the franchisee or a permittee. No business owner or resident shall employ another, other than franchisee or a permittee, to dispose of solid waste or recyclables.

F. Illegal Disposition and Collection of Solid Waste, Recyclable Materials or Compostable Materials.

1. No person may deposit solid waste or containers upon any street, alley, gutter or parkway, or upon any lot or vacant area or other public place or way other than as provided in this chapter.

2. No person shall tamper with, modify, scavenge from or deposit solid waste, compostable materials, or recyclable materials in any solid waste, compostable materials or recyclable materials container which has not been provided for his or her use, without the permission of the occupant of the premises where the container is located.

3. Except as otherwise provided in LMC 8.08.120(H), no person shall collect the recyclable materials or compostable materials from residential premises or posted recycling centers within the city.

G. Obstruction of Franchisee Unlawful. It shall be unlawful for any person, their agents or employees, to hinder, threaten, impede, or obstruct franchisee or any permittee in the performance of his/her duty as defined in this chapter. (Ord. 1910 § 4, 2010; Ord. 1816 § 2, 2007)

8.08.040 Containers.

A. Solid Waste Containers.

1. Solid Waste Carts. Occupants of residential premises receiving individual collection services shall place solid waste in the wheeled carts provided by franchisee.

2. Bins and Debris Boxes. Occupants of commercial premises, multifamily premises that do not receive individual collection service, and any residential premises requesting temporary bin or debris box service shall place solid waste in bins and debris boxes, provided by the franchisee, that shall be:

a. Leakproof, and provided with a lid, where applicable;

b. Approved by the fire department as providing adequate protection against fire hazard;

c. Located within enclosures designed for this purpose as described in Article VIII of this chapter.

B. Recyclable Materials Containers. Occupants of residential and commercial premises shall separate recyclable materials from solid waste and compostable materials and place recyclable materials in container(s) provided by the franchisee. In the case where the occupant of the premises is not the owner, the owner is responsible to instruct the occupant in proper separation and placement of recyclable materials from solid waste and compostable materials. Franchisee or permittee shall also give owners or occupants of commercial premises contracting for collection services the choice of using a bin if quantities of recyclable materials generated warrant use of larger containers and space is available at commercial premises for one or more bins.

C. Compostable Materials Containers. Occupants of residential and commercial premises that receive compostable materials collection service from franchisee shall separate compostable materials from solid waste and recyclable materials and place compostable materials in container(s) provided by the franchisee.

D. Filling of Containers. No occupant of either residential or commercial premises shall fill any container with solid waste, compostable materials or recyclable materials above the top of the container as to permit the contents of any container to be blown or otherwise strewn about. When filled, standard containers shall not exceed 60 pounds (27

kg) in weight; 20-gallon cart containers shall not exceed 40 pounds (18 kg) in weight; and standard and 20-gallon cart containers shall not exceed 40 pounds (18 kg) in weight when used for yard trimmings.

If recyclable materials placed for curbside residential recycling collection are not collected, the person who placed the recyclable materials is entitled to receive a written explanation explaining the failure of the collector to collect the materials, whether due to improper placement of the con-

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tainer, contamination by nonrecyclable materials, or other reason. If the contents of the containers are not removed on the date and time scheduled by the franchisee and the container is placed properly by time of collection, not contaminated, and not over-filled, the owner or occupant should immediately notify the franchisee or the city manager, and it shall be the duty of the franchisee to arrange for the collection of the solid waste, compostable materials or recyclable materials within 24 hours after notification.

E. Proper Placement of Containers.

1. Single-Family Cart Customers. Carts used by single-family residential premises for the purpose of reception, storage and collection of solid waste, compostable materials or recyclable materials shall be placed on the street against the curb in front of the premises occupied by the person depositing the same as directed by the franchisee, unless the owner or occupant has contracted with the franchisee for backyard or side yard service. Where no street curb exists, the cart shall be placed not more than five feet from the outside edge of the street nearest the property's entrance.

2. Multifamily and Commercial Cart Customers. Multifamily and commercial customers using carts for collection shall place solid waste, recyclable materials and compostable materials carts as described under subsection (E)(1) of this section, unless the franchisee approves of another location.

3. Solid Waste Bin and Debris Box Customers. Multifamily and commercial premises receiving solid waste bin or debris box service shall place all bins and debris boxes and recyclable materials in an enclosure facility meeting requirements described in Article VIII of this chapter.

F. Improper Placement of Containers. If recyclable materials placed for curbside residential recycling collection are not collected, the person who placed the recyclable materials is entitled to receive a written explanation explaining the failure of the collector to collect the materials. It is the responsibility of the person who places the recyclable materials for residential recycling collection to remove the recyclable materials within 24 hours of receipt of the explanation.

In all cases of disputes or complaints concerning the place where containers shall be placed while waiting for the removal of their contents, the city manager shall designate the placement location.

G. Protection – Fire Safety. The waste generator shall protect materials placed in containers from adverse environmental conditions by proper container lid closure or lid placement so that rain does not render the materials not disposable, recyclable, marketable and/or usable.

Each commercial/industrial business owner, owner or management of multifamily unit, or residential householder, as the case may be, shall maintain the containers on their premises, and the area in which they are located, in a good, usable, clean and sanitary condition, and shall ensure that the lid or cover on the container is kept fully closed, that no solid waste or recyclable materials are placed outside the container, and that containers are kept in a manner that prevents leakage, spillage and the escape of odors.

Franchisee and permittees shall provide containers that comply with current California Fire Code requirements regarding combustible materials (California Fire Code Section 1.103, Combustible Materials, particularly Section 1103.2.1).

H. Timing of Placement and Removal of Containers.

1. Occupants shall not place containers at the curb for collection by franchisee at any time other than the days established by the franchisee for the collection of such solid waste, compostable materials or recyclable materials, or earlier than sunset of the day preceding the day designated by the franchisee for collection. All containers shall be removed from the place of collection prior to 12:00 midnight of the day the containers have been emptied and stored in a location screened from public view.

2. Occupants of multifamily and commercial premises receiving bin solid waste collection services shall leave all containers in enclosure facilities for collection by the franchisee or permittee meeting requirements described in Article VIII of this chapter.

I. Supervision and Cleaning of Containers. Each occupant of residential and commercial premises shall maintain supervision over containers on their premises. Franchisee and permittee shall maintain bins and debris boxes in a clean, sanitary

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condition. Occupants provided with carts for collection shall maintain carts in a clean, sanitary condition.

J. Unauthorized Tampering with Containers. No person other than the waste generator or any waste generator employee, city manager, franchisee or permittee of the city shall move, remove or interfere with any container or its contents.

K. Collection of Excess Materials. If the volume of solid waste, recyclable materials or compostable materials, either from residential, multifamily, or commercial premises, is too large to be placed in the issued container(s), the owner or occupant of the premises shall pay an extra fee to have overages collected by franchisee. The fee shall be established by Article 8 of the franchise agreement and approved by the city council. Such material shall be carefully placed beside the container in securely tied bags or bundles not in excess of six feet in length and weighing not more than 30 pounds.

L. Persons in Containers. No person shall enter into or be inside of a solid waste, recyclable materials or compostable materials container.

M. Pickup and Tagging – Exceptions. If the contents of the containers are not removed on the date and time scheduled by the franchisee, owner or occupant should immediately notify the franchisee or the city manager, and it shall be the duty of the franchisee to arrange for the collection of the solid waste, compostable materials or recyclable materials within 24 hours after notification. Notwithstanding the fact that the franchisee is obligated to remove trash from residential, multifamily and commercial premises on a weekly basis, the owner or occupant is obligated to abide by the requirements for appropriate placement and filling of trash carts, and can be required to pay an extra fee to the franchisee to remedy any violations of those requirements. (Ord. 1816 § 2, 2007)

8.08.060 Duration of storage.

No person may store or accumulate any solid waste in a container or at a location other than as set forth in this chapter, or for any length of time other than as follows:

A. Residential Premises. At least once per week, the franchisee shall collect and dispose of solid waste generated at residential premises within the city; provided, that waste generators

have properly placed and properly filled the container for the solid waste at an appropriate location for collection.

B. Multifamily Residences and Commercial and Industrial Premises. At least once per week, the franchisee shall collect and dispose of all solid waste generated at multifamily and commercial premises within the city; provided, that waste generators have properly placed and properly filled the container with solid waste at an appropriate location for collection. If such waste is putrescible and placed in a debris box for collection, franchisee shall collect such material not less than once per week. If such waste is nonputrescible and placed in a container or bin for collection, franchisee shall schedule collection at a frequency acceptable to the waste generator.

C. Storage Prohibited. Other than as set forth in this chapter, it is unlawful for any person to dump, bury or otherwise dispose of or store or accumulate any solid waste on any private or public property within the city; provided, however, that residential waste generators may use leaves, grass clippings, food waste, and the like for the purpose of home composting or mulching. (Ord. 1816 § 2, 2007)

8.08.070 Disposal.

The franchisee disposing of solid waste shall dispose of solid wastes at a disposal site or processing facility in accordance with the terms and conditions of its franchise agreement with the city and in accordance with all federal, state and local laws and regulations. A waste generator disposing of its own solid wastes, which were generated by such waste generator, shall dispose solid wastes at a disposal site or processing facility in accordance with all federal, state and local laws and regulations. (Ord. 1816 § 2, 2007)

8.08.080 Special collection and disposal provisions.

A. Infectious Waste. The removal of infectious waste from homes, hospitals or other places where highly infectious or contagious diseases have prevailed shall be performed under the supervision and direction of the Alameda County health officer, and such infectious waste shall not be placed with solid waste for regular collection and disposal by franchisee.

B. Flammable/Hazardous Waste.

1. Highly flammable, explosive/radioactive or other hazardous waste shall not be placed in containers for regular collection and disposal by franchisee, but shall be removed by separate agreement(s), at the owner's or occupant's expense, in accordance with all federal, state and local laws and regulations, with a company properly licensed and permitted for the collection, processing and disposal of flammable, explosive/radioactive or other hazardous waste.

2. If the franchisee determines that waste placed for collection or disposal is hazardous waste or infectious waste or other waste that may not legally be disposed of at the disposal site or presents a hazard to franchisee's employees, the franchisee shall have the right to refuse to accept such waste.

3. If the franchisee cannot locate the hazardous waste generator immediately upon discovering hazardous waste in materials placed for collection, the franchisee shall, prior to leaving the premises, leave a tag at least two inches by six inches listing the phone number for the Alameda County household hazardous waste program, and indicating the reason for refusing to collect the material.

4. If the franchisee collects and delivers hazardous waste to a disposal site before its presence is detected, the waste generator will be instructed to remove the hazardous material. If it is not removed, the waste generator will be charged for its disposal.

C. Animal Waste. Animal waste shall not be placed in containers for regular collection and disposal, but shall be removed and disposed or processed by waste generator or under a separate agreement between waste generator and a company properly licensed, at the owner's or occupant's expense, in accordance with all federal, state and local laws and regulations.

D. Ashes. All ashes, when placed for collection, shall be cold and free from any fire, live coals or other substances which might ignite.

E. Contaminated Recycling and/or Compostable Materials. The franchisee shall not be required to collect and dispose of recyclable or compostable materials that are contaminated with solid waste or other material to such a degree that if commingled with other recyclable or compostable materials, would require all or part of the

total commingled recyclable or compostable materials collected to be disposed. The franchisee shall notify owners or occupants of violations as described in the franchisee agreement with the city. (Ord. 1816 § 2, 2007)

8.08.090 Restrictions on burying or burning waste.

A. Burning Waste. No solid waste, hazardous waste, infectious waste or any other type of deleterious or offensive substances shall be burned within the city except in incinerators of a type approved in writing by the fire chief to burn such wastes.

B. Burying. No person shall dump, place or bury any solid waste, hazardous waste, infectious waste, or any other deleterious or offensive substances. This subsection shall not apply to any privately owned parcel where a specific waiver of this subsection is granted by resolution of the city council due to unusual or extraordinary conditions.

C. Dumping. No person may dump or spread solid waste, recyclable materials, compostable materials, hazardous waste, infectious waste or any other type of deleterious or offensive substances on the surface of the ground for drying, except for compostable materials used for the purpose of home composting. (Ord. 1816 § 2, 2007)

8.08.095 No unauthorized containers.

A. No Unauthorized Containers. Except as expressly authorized by this chapter, no person other than a franchisee or permittee may place a container within the city.

B. Violation – Notice – Remedies. The city shall notify, in writing, any person who violates this section that the prompt and permanent removal of the container from the premises is required. The city shall deliver the notice by posting a copy of the notice prominently on the container. The notice shall state the time within which the container must be removed, which time shall be not less than 24 hours after posting of the notice, or not less than six business hours after telephonic notification, if any. For purposes of this section, "business hours" means the hours of 7:00 a.m. to 5:00 p.m., Monday through Saturday. If the container is identified with the name and telephone number of the solid waste or recycling enterprise servicing it, as is required by LMC 8.08.300(C), the city shall also endeavor

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to contact the enterprise by telephone. Failure to notify the owner telephonically shall not invalidate the notice.

The city may impound or cause to be impounded any such container if it is not permanently removed from the premises within the time set forth in the notice.

A person who violates this section is liable to the city for all fines and charges levied in connection with the collection, transportation, storage and handling of the container by the city. The container's owner or his or her representative shall retrieve the container immediately after all applicable fines and charges have been paid. The city manager may delegate to the franchisee or a permittee the authority to impound unauthorized containers and to collect the fines and charges levied by the city.

C. Cessation of Use. Once the city posts a written notice of violation on the unauthorized container, the customer using the unauthorized container shall immediately cease placing solid waste or recyclable materials in it. (Ord. 1816 § 2, 2007)

Article III. Franchise Agreements

8.08.100 City council to issue franchise.

The city council may from time to time enter into franchise agreements for the collection of solid waste, compostable materials and recyclable materials from residential and commercial premises. All franchise agreements may be entered into without competitive bidding. (Ord. 1816 § 2, 2007)

8.08.110 Collection by franchisee.

Collection and removal of solid waste, compostable materials and recyclable materials by the franchisee shall be made in accordance with the terms and conditions of this chapter and the agreement between the city and the franchisee. (Ord. 1816 § 2, 2007)

8.08.120 Unlawful collection.

Except as expressly provided in this section, it is unlawful for any person to collect or transport solid waste, recyclable materials or compostable materials within the city unless such person is a franchisee or permittee, or the material collected is exempted under this section. It is unlawful for any person to permit, allow or enter into any agreement

whatsoever for the collection or transportation of solid waste with any person who is not the franchisee, except as the solid waste collected is exempted under this section. The following types of solid waste, recyclable materials and compostable materials are exempted under this section:

A. Compostable materials removed from a premises by a gardening, landscaping or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a transportation service and for no additional or separate fee;

B. Tree trimmings, clippings and all similar materials generated at parks and other city-maintained premises, which may be collected and transported by the city to the disposal site or processing facility;

C. Hazardous or dangerous materials; liquid and dry caustics; acids; biohazardous, flammable and explosive materials; insecticides; and similar substances;

D. Infectious medical waste (as defined in California Health and Safety Code Section 25117.5);

E. Byproducts of sewage treatment, including sludge, grit and screenings;

F. Solid waste, recyclable materials, compostable materials and construction and demolition debris which are removed from any premises by the waste generator, and which are transported personally by the owner or occupant of such premises, or by his or her employees or a contractor whose removal of the solid waste, recyclable materials and/or compostable materials is incidental to the service being performed;

G. Animal waste and remains from slaughterhouses or butcher shops for use as tallow;

H. Recyclable materials and compostable materials which are source-separated at any premises by the waste generator and donated to youth, civic, or charitable organizations;

I. Containers delivered for recycling under the California Beverage Containers Recycling Litter Reduction Act, Section 14500 et seq., California Public Resources Code;

J. Construction and demolition debris managed in a manner consistent with an approved waste management plan, as that term is defined in Chapter 15.28 LMC, Construction and Demolition Debris;

K. Permittees shall maintain the right to collect specialty recyclable materials, to accept donated recyclable materials and to pay the service recipi-

ent for recyclable materials for the collection of source-separated recyclable materials and source-separated compostable materials in a manner consistent with provisions of Article IV of this chapter; and

L. Materials generated by public schools. (Ord. 1910 § 5, 2010; Ord. 1816 § 2, 2007)

8.08.130 Charges for service.

From time to time, the city council shall establish by resolution rates that franchisees may charge owners or occupants for the collection, processing and/or disposal of solid waste, compostable materials and recyclable materials. Prior to adopting the resolution establishing the rate, the city council shall hold a public hearing.

In addition to the rates established for franchisees, the city may establish rates for street sweeping services, fees for refuse vehicle impacts, and rates for neighborhood preservation clean-up services and may incorporate such rates into the charges for service, in conformance with Article IX (Street Sweeping Services), Article X (Refuse Vehicle Impact Fee), and Article XI (Neighborhood Preservation Clean-Up Services). (Ord. 1827 § 3, 2007; Ord. 1818 § 2, 2007; Ord. 1816 § 2, 2007)

8.08.140 Billings and penalties.

Each owner or occupant of the city receiving collection services from franchisee shall be billed by the franchisee periodically in accordance with the rates established by Article 8 of the franchise agreement and approved by the city council. If an owner or occupant fails, refuses or neglects to pay the bill, then a penalty may be added to the bill and the sum, together with any costs incurred by the franchisee, may be recovered by the franchisee as provided by law, including Government Code Section 54348. If an occupant fails to pay the bill, the owner shall be responsible for the payment. (Ord. 1816 § 2, 2007)

8.08.150 Payment under protest.

Any owner or occupant who has been billed for services by a franchisee and desires to contest the extent or degree or reasonableness of the amount billed shall make payment of the charges under protest and, at the same time, shall file a written statement of protest with the city manager. Within

30 days after the date of the filing, the city manager shall notify the protesting owner or occupant of the findings and adjudication and adjustment in the matter. The decision of the city manager may be appealed by any person upon submittal of an appeal fee that shall be set by the city council from time to time. Such appeal shall be directed to the city council, which shall conduct a hearing on the matter at any regular council meeting. The council's determination shall be final. The appeal fee shall be refunded to the protesting owner or occupant if the city council finds in favor of the protest. (Ord. 1816 § 2, 2007)

8.08.160 Failure to pay.

If there is no payment of a bill after 60 days or more:

A. The franchisee shall undertake collection of the bill (including penalties and expenses of collection) for a period of one year from the invoice date. Franchisee shall make reasonable efforts to obtain payment through issuance of late payment notices, telephone requests for payment, and assistance from collection agencies (who shall make at least two attempts at collection). If franchisee's collection efforts for a one-year period fail, and franchisee can demonstrate to the city that it attempted on at least five occasions to solicit moneys due from each delinquent account, then:

B. The franchisee may assign its rights to collection (including penalties and expenses of collection) to the city. The city shall then initiate any collection procedures authorized by law, including those special assessment procedures authorized by Government Code Sections 38970.1 and 25831. If the city collects the delinquent amount, it shall pay the collected moneys to franchisee after deducting city's administrative costs and costs of collection. (Ord. 1816 § 2, 2007)

Article IV. Recyclable Materials Permit System

8.08.200 Authorization.

A. The city council, pursuant to Section 40059 of the California Public Resources Code, does determine that collection and processing of recyclable materials may be provided within the city by persons other than the franchisee through issuance of permits to such persons, in accordance with the terms of this article.

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B. The city council may also permit the collection and processing of recyclable materials under a franchise agreement, as allowable by state law. The franchisee is not required to secure a permit under this article.

C. No person may collect or process recyclable materials within the city unless the person has either entered into a franchise agreement with the city pursuant to Article III of this chapter, has been issued a permit pursuant to this article, or is exempt from this article pursuant to LMC 8.08.210. (Ord. 1816 § 2, 2007)

8.08.210 Exemptions.

The following persons are exempted from this article:

A. The city;

B. Commercial business owners or occupants that deliver source-separated recyclable materials to a location to be recycled or reused;

C. Franchisee who has entered into a franchise agreement with the city for collection of recyclable materials not contaminated by solid waste for recycling;

D. A person who is delivering recyclable materials for recycling under the California Beverage Containers Recycling Litter Reduction Act (Public Resources Code Section 14500 et seq.);

E. Youth, civic or charitable organizations which receive recyclable materials and compostable materials that are source-separated and donated by the waste generator; and

F. A licensed contractor removing items from the construction site for salvage or recycling, under a waste management plan approved under Chapter 15.28 LMC if the contractor (1) uses his or her own employees and vehicles for this purpose, and (2) maintains no bins or boxes at the site which are detachable from the vehicle. (Ord. 1816 § 2, 2007)

8.08.220 Permit issuance and term.

The city manager shall issue permits for the collection and processing of recyclable materials as provided for in this article. Each permit shall terminate without further notice one year from date of issuance, unless revoked pursuant to LMC 8.08.290. No permit for the collection and processing of recyclable materials shall be issued unless the applicant satisfies all of the requirements of this article. (Ord. 1816 § 2, 2007)

8.08.230 Permit requirements.

A. Requirements. As part of the application process to obtain a recyclable materials permit, an applicant must demonstrate the ability to comply with the following requirements:

1. Recyclable materials collected will be taken to a materials recovery and processing center;

2. There is a responsible person who will respond to inquiries and complaints;

3. Vehicles to be used are licensed and of suitable size and type, and have methods to prevent spillage, overflow, outfall or leakage;

4. The applicant has or can obtain insurance and a bond in the type and amounts required under subsections C and E of this section;

5. The applicant agrees to comply with the requirements of this article and Article V of this chapter, with all provisions of the Livermore Municipal Code, and with county, state and federal laws and regulations as required by subsection G of this section;

6. The applicant has or will obtain a city of Livermore business license.

B. Required Information. The applicant shall provide the city manager the following information:

1. Name of the applicant;

2. Business address and telephone number of the applicant;

3. The name and location of the material recovery facility where the applicant intends to legally process recyclable materials;

4. The name and telephone number of the person within applicant's organization who is responsible for responding to inquiries and complaints;

5. If a joint venture, a partnership or limited partnership, the names of all partners, and the names of the officers, and their percentage of participation and their permanent addresses;

6. If a corporation, the names and permanent addresses of shareholders who own greater than a 10 percent ownership in the corporation and their percentage ownership and all officers;

7. A list of all vehicles to be used in collection and/or transportation of recyclable materials and such list shall identify the following for each vehicle: license plate number; vehicle identification number; vehicle type; make and model; age of

equipment; recyclable materials carrying capacity of each vehicle; and a description of the method(s), cover, or other features used to prevent spillage, overflow, outfall, leakage, or other escape of materials or liquids from the vehicle;

8. Statement identifying the location of vehicle storage site;

9. Proof of insurance in the types and amounts specified in subsection E of this section;

10. Bond required in subsection C of this section;

11. A statement from applicant that it agrees to comply with requirements of this chapter including, but not limited to, the requirement to indemnify the city required by subsection D of this section and to comply with local, state, and federal laws and regulations required by subsection G of this section;

12. The applicant's city of Livermore business license number and expiration date;

13. The signature and title of the person submitting the application;

14. Such other facts or information as the city manager may require.

C. Bond Required. Before obtaining a permit under the provisions of this article, the applicant, as a condition to the permit, shall post with the city clerk a bond in the amount of \$10,000. The bond shall be conditioned upon the full and faithful performance by the permittee of obligations under the applicable provisions of this chapter and shall be kept in full force and effect by the permittee throughout the life of the permit and all renewals thereof. The bond shall be issued by an insurer admitted to transact surety insurance in the state of California and shall be subject to the approval of the city attorney.

D. Indemnification by Permittee. Before obtaining a permit under the provisions of this article, the applicant shall agree to indemnify, defend and save the city, its officers, employees and agents harmless of and from all claims, demands, actions or causes of actions of every kind and description resulting directly or indirectly from, arising out of, or in any way connected with the exercise of the permit, including, but not by way of limitation, any act or omission of any officer, employee or agent of permittee, and further specifically including any and all liability of the city arising from permittee's arranging for or disposing of

any waste in any disposal site whether to the U.S. Government, state of California or any other public or private person, firm or agency.

E. Insurance.

1. Before obtaining a permit under the provisions of this article, the applicant shall procure and maintain for the term of the permit insurance against claims for injuries to persons or damages to property which may arise from or in connection with the collection and processing of recyclable materials within the city by the applicant, his agents, representatives, employees or subcontractors.

2. Coverage shall be at least as broad as:

a. Insurance Services Office commercial general liability coverage (occurrence form CG 0001);

b. Insurance Services Office form number CA 0001 (Ed. 1/87) covering automobile liability, code 1 (any auto);

c. Workers' compensation insurance as required by the state and employer's liability insurance.

3. The limits of coverage shall be no less than:

a. General Liability. One million dollars per occurrence for bodily injury, personal injury and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability. One million dollars per accident for bodily injury and property damage.

c. Employer's Liability. One million dollars per accident for bodily injury or disease.

4. Any deductibles or self-insured retentions must be declared to and approved by the city attorney. At the option of the city attorney, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the city, its officers, officials, employees and volunteers; or the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

5. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

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a. The city, its officers, officials, employees, agents and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the applicant; products and completed operations of the applicant; premises owned, occupied or used by the applicant; or automobiles owned, leased, hired or borrowed by the applicant. The coverage shall contain no special limitations on the scope of protection afforded to the city, its officers, officials, employees, agents or volunteers.

b. For any claims related to this project, the applicant's insurance coverage shall be primary insurance as respects the city, its officers, officials, employees, agents and designated volunteers. Any insurance or self-insurance maintained by the city, its officers, officials, employees, agents or volunteers shall be in excess of the applicant's insurance and shall not contribute with it.

c. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the city, its officers, officials, employees, agents or designated volunteers.

d. The applicant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the city attorney.

6. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, if licensed in the state of California. If not licensed in the state of California, the A.M. Best rating shall be not less than A+:X.

7. The applicant shall furnish the city attorney with original endorsements affecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the city manager before work commences.

8. The applicant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each

subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Compliance with Motor Vehicle Code. The permittee's trucks must comply with the regulations as set forth in the California Vehicle Code, all other applicable California codes, this chapter, and other city regulations.

G. Compliance with Local, State and Federal Laws and Regulations. Before obtaining a permit under the provisions of this article, the applicant shall agree to perform the terms of the permit in such a manner so as to comply with all valid and applicable local, state and federal laws and regulations pertaining to the collection, storage, transportation and processing of recyclable materials. The applicant shall also agree to comply with all other ordinances and regulations of the city and applicable laws and regulations of the county of Alameda, state of California, and United States of America, and shall obtain and keep in force all required permits and business licenses.

H. Additional Prerequisites. The council may require certain additional prerequisites to the issuance of a permit, and such terms and conditions regulating the activities of the permittee, as the council may deem necessary or proper and may, from time to time, amend this chapter which amendments shall be binding upon any permittee as of the effective date of such amendment.

I. Permit Fee. Prior to issuance or renewal of the permit, the applicant or permittee shall pay to the city such fees as shall be set by resolution of the city council.

J. Approval or Denial of Permit. Within 60 calendar days of receipt of an application for a permit to collect and process recyclable materials, the city manager shall review the application and shall approve the permit if the application is complete (under subsection B of this section) and the applicant complies with all the requirements of subsection A of this section. The permit is valid for one year and may be renewed under LMC 8.08.260. (Ord. 1816 § 2, 2007)

8.08.240 Assignment or transfer of permit.

A permit issued under this article may not be transferred or assigned. Any such transfer or assignment shall be void and the attempted assignment shall result in the revocation of the permittee's permit.

For the purposes of this section, "transfer" or "assignment" shall include, but not be limited to: (1) a sale, exchange or other transfer of substantially all of permittee's assets dedicated to service under this chapter to a third party; (2) a sale, exchange or other transfer of 10 percent or more of the outstanding common stock of permittee; (3) any reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which permittee or any of its shareholders is a party which results in a change of ownership or control of 10 percent or more of the value or voting rights in the stock of permittee; and (4) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. For purposes of this section, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment. (Ord. 1816 § 2, 2007)

8.08.250 Annual information.

By April 30th of each year, permittee shall provide written information to the city regarding the permittee's operations for the prior 12-month period, from January through December. The report shall include the recyclable materials collected by the permittee in the city by type, weight of each type, name of customer serviced and container sizes used. (Ord. 1816 § 2, 2007)

8.08.260 Permit renewal.

The recyclable materials permit must be renewed annually, on the anniversary of the original permit. (Ord. 1816 § 2, 2007)

8.08.270 Prohibitions.

A. Collection of Solid Waste and Mixed Waste Prohibited. Permittee shall not collect solid waste, or mixed waste that contains solid waste, compostable materials and/or recyclable materials except as provided in subsection B of this section.

B. Permittee Shall Not Collect Compostable Materials. Permittee shall only collect recyclable materials from occupants of premises that it has an agreement with and which occupant separates the recyclable materials from its solid waste and places such recyclable materials at a designated collection location for collection by the permittee.

C. Charge for Services. Permittee shall not charge, nor shall permittee receive value from the waste generator, for the permittee's services; provided, however, that permittee may charge for the collection and processing of construction and demolition debris in a manner consistent with an approved waste management plan, as that term is defined in Chapter 15.28 LMC, Construction and Demolition Debris. (Ord. 1910 § 6, 2010; Ord. 1816 § 2, 2007)

8.08.280 Ability to inform city of violations.

Any person shall have the right to inform the city of violations of this article. If a person can document that permittees or other persons are servicing collection containers in a manner that is not consistent with this chapter, such person may report the location and the name of the permittee or person to the city manager along with evidence of the violation of this chapter. (See also LMC 8.08.095 regarding unauthorized containers.) (Ord. 1816 § 2, 2007)

8.08.290 Permit revocation.

A. Conditions for Revocation. A permit may be revoked, at the option of the city council, in the event:

1. There is a change of ownership or management control of any kind or nature of the operating company, unless approval therefor has been obtained in writing from the city council; or
2. That the permittee has not complied with either the provisions of this chapter or all other applicable statutes, ordinances, rules and regulations.

The city manager shall notify the permittee in writing of noncompliance and shall order compliance within 30 days.

B. Hearing for Noncompliance. If noncompliance is not corrected within 30 days of the written notice of noncompliance pursuant to this section, the city, after a hearing, may revoke the permit or take such other action as the city council shall determine. (Ord. 1816 § 2, 2007)

Article V. Franchisee's and Permittee's Obligations

8.08.300 Properties, facilities, equipment, etc.

A. General.

1. Franchisee and each permittee shall maintain all of its properties, facilities and equipment used in providing service under this chapter in a safe, neat, clean and operable condition at all times.

2. All collection operations shall be conducted as quietly as possible and shall conform to applicable federal, state, county and city noise level regulations.

B. Hours for Collection. The collection of solid waste, compostable materials and recyclable materials from commercial premises that are 200 feet or less from the point of collection (e.g., the location of the bin) to any point of a residential premises' lot line shall not occur before 6:00 a.m. or after 6:00 p.m. The collection of solid waste, compostable materials and recyclable materials as measured from the location of the bin on commercial premises to the adjacent residential premises' lot line that is greater than 200 feet from the point of collection to any point of a residential premises' lot line shall not occur before 4:00 a.m. or after 6:00 p.m.

C. Specifications and Restrictions on Collection Vehicles and Containers. All vehicles and containers used for solid waste, compostable materials or recyclable materials collection within the city shall comply with the following:

1. All collection trucks or vehicles shall be completely enclosed with a nonabsorbent cover while transporting solid waste, compostable materials or recyclable materials in or through the city. "Completely enclosed with a rigid, nonabsorbent cover" means that solid waste, compostable materials or recyclable materials shall not be visible from the street nor shall any substances be permitted to leak, spill or become deposited along the public streets.

2. All collection vehicles and containers shall be identified by permittee's or franchisee's name, local telephone number and unique vehicle identification number displayed in a prominent location, in numbers and letters no less than six inches high. The city's logo shall not be shown on

the vehicles or debris boxes. The equipment used shall be kept clean and in good repair at all times.

3. All collection vehicles and containers shall comply with all federal, state and local laws, permits, licenses and regulations.

D. Use of Vehicles. Any person operating a privately owned solid waste, compostable materials or recyclable materials vehicle under provisions of this chapter shall do so in accordance with all federal, state and local laws, permits and regulations and shall also abide by the following:

1. No person shall leave trucks loaded with solid waste, compostable materials or recyclable materials parked on city streets for more than a four-hour period.

2. Franchisee and each permittee shall ensure that each vehicle carries, in a readily accessible location, the vehicle registration, certificate of insurance card and an identification card with the name of whom to telephone in case of an accident. Each vehicle shall also be equipped with a five-pound fire extinguisher certified by the California State Fire Marshal.

3. Franchisee and each permittee shall inspect each vehicle daily to ensure that all equipment is operating properly. (See LMC 8.08.230(F).) Vehicles which are not operating properly shall not be used to provide service until they are repaired and do operate properly.

4. Franchisee and each permittee shall perform all scheduled maintenance functions for equipment in accordance with the manufacturer's specifications and schedule.

5. Franchisee and each permittee shall keep accurate records of all vehicle inspections and maintenance activities, recorded according to date and mileage, and shall make such records available to the city manager upon request.

6. Franchisee and each permittee shall furnish the city manager a written inventory of all vehicles, including collection vehicles, used in providing service and shall update the inventory annually. For each vehicle, the inventory shall list the vehicle manufacturer, vehicle identification number, date of acquisition, type, capacity and decibel rating.

E. Maintenance of Containers. Franchisee and each permittee shall be responsible for repair and maintenance of all its containers so that such containers are functional. The containers shall not leak

or have ill-fitting tops. Franchisee and each permittee shall be responsible for periodically cleaning its containers, except its carts, so that such containers are sanitary and have a clean and neat appearance. Waste generators using carts shall be responsible for cleaning their carts so that such carts are sanitary and have a clean and neat appearance.

F. Franchisee and Permittee's Employees. Franchisee and each permittee shall employ only competent, qualified, licensed, sober and drug-free personnel who serve the public in a courteous, helpful and impartial manner.

1. Nondiscrimination. Franchisee and each permittee shall hire employees without regard to race, religion, color, national origin, sex, political affiliation, or any other nonmerit factor.

2. Licenses. Any employee driving the franchisee's or permittee's vehicles shall, at all times, have in his or her possession a valid and appropriate vehicle operator's license issued by the state of California.

3. Training. Franchisee and each permittee shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment. Franchisee and each permittee shall train its employees involved in solid waste, compostable materials or recyclable materials collection to identify and not collect hazardous waste or infectious waste. A copy of the training record, including student roster, shall be provided to the city upon request.

4. Supervision. Franchisee and each permittee shall designate one qualified employee as supervisor of field operations within the city. The field supervisor will devote his or her time in the field checking on collection operations, and responding to complaints.

G. Inquiries and Complaints.

1. Office Location. Franchisee shall provide an office in such a reasonable location as the city manager approves.

2. Telephone Service. Franchisee shall maintain a toll-free telephone service number for use by persons within the city. Telephones shall be attended by competent persons from 7:00 a.m. to 5:00 p.m. on regular workdays. A message machine shall be available for persons to leave a message during nonbusiness hours.

3. Prompt Response. Franchisee shall be responsible for the prompt and courteous attention

to, and prompt and reasonable resolution of, all complaints. Franchisee shall respond to all complaints from persons within 24 hours of receipt of such complaint, weekends and holidays excluded. (Ord. 1816 § 2, 2007)

8.08.310 Records.

A. Required Records. Franchisee shall provide full, complete and accurate records listed below that shall be subject to review and reproduction by the city manager.

1. Franchisee shall provide reports as required in the franchise agreement.

2. Franchisee shall record on a daily basis the quantities of solid waste, compostable materials and recyclable materials collected. Franchisee and each permittee shall cooperate with the city manager in the performance of waste composition studies.

3. Other records shall be maintained pursuant to this section as may be necessary to assist the city in meeting its obligations under the Integrated Waste Management Act of 1989.

B. Retention of Records. Franchisee and permittees shall keep and preserve all required records for the duration of the contract or permit and for five years after termination of the contract or permit. (Ord. 1816 § 2, 2007)

8.08.320 Inspection of records.

The city manager or his or her designee shall have the right to inspect, review, and reproduce the specific documents or records required pursuant to this chapter, or any other similar records or reports of franchisee and/or each permittee that it shall deem, at its sole discretion, necessary to evaluate annual reports, and franchisee's and permittee's performance provided for in this chapter. The records shall be made available for unannounced, on-site inspection during regular business hours. In the event the person responsible for such records is not on the premises, arrangements will be made for an inspection within 24 hours of notice. (Ord. 1816 § 2, 2007)

Article VI. General Provisions

8.08.400 General rules and regulations.

The city shall have the authority to amend this chapter, make other reasonable rules and regulations concerning individual collection, processing and disposal of solid waste, compostable materials and recyclable materials, or relating to the operation of a transfer facility, as shall be found necessary. (Ord. 1816 § 2, 2007)

8.08.410 ADA compliance.

With regards to all requirements of this chapter, the franchisee and each permittee shall make reasonable accommodations with regards to container and collection requirements (e.g., with regards to the container size and type, placement of containers for collection, etc.) for any individual with a disability in compliance with the Americans with Disabilities Act at no additional cost to the customer. (Ord. 1816 § 2, 2007)

8.08.420 Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions. The city council hereby declares that it would have passed this chapter and each section, subsection, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional, and would have passed and adopted the same even though any parts, sections, subsections, sentences, clauses or phrases that may be held invalid had been omitted therefrom. (Ord. 1816 § 2, 2007)

8.08.430 Cooperation with city-initiated studies.

Franchisee or each permittee shall cooperate with the city manager or its agent in performance of city-initiated studies of solid waste, recyclable materials, and compostable materials such as but not limited to waste characterization and composition studies. (Ord. 1816 § 2, 2007)

Article VII. Litter

8.08.500 Depositing litter prohibited.

It is unlawful for any person to generate litter or to throw, discard, place or deposit solid waste, recyclable materials, or compostable materials in any manner or any amount on any public or private property within the city, except in approved containers or in lawfully established dumping grounds. (Ord. 1816 § 2, 2007)

8.08.510 Throwing litter from a vehicle prohibited.

It is unlawful for any person, whether driver or passenger, in a vehicle to throw or deposit litter in any manner or amount upon any street or other public or private property within the city. (Ord. 1816 § 2, 2007)

8.08.520 Sweeping litter into streets prohibited.

It is unlawful for any person to sweep into or deposit in any gutter, street or other public place within the city the accumulation of litter from any building or lot. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter. (See LMC 13.45.070.) (Ord. 1816 § 2, 2007)

8.08.530 Depositing household or commercial waste in public litter receptacles prohibited.

No person shall deposit or cause to be deposited in a public litter can any solid waste or other material which may be generated from a personal household or a business. (Ord. 1816 § 2, 2007)

8.08.540 Depositing solid waste in city facility solid waste containers.

No person shall deposit or cause to be deposited on a city property or in any city solid waste receptacle or debris box any solid waste or other material which may be generated from a personal household or a business. (Ord. 1816 § 2, 2007)

8.08.550 Depositing solid waste in sewer or storm system.

A. Depositing of Solid Waste in Sewer Directly. No person shall empty, throw or deposit in any storm drain, storm or sanitary sewer man-

hole, or sanitary sewer cleanout any solid waste, hazardous waste, infectious waste, recyclable materials, or compostable materials.

B. Kitchen Waste. Kitchen waste may be deposited into the sewer systems through a mechanically operated disposal device under the following conditions:

1. The disposal device must be attached to the sewer in accordance with the plumbing code of the city and installed correctly.

2. The device must be capable of grinding the waste simultaneously with a flow of water of not less than two gallons per minute, or in such additional quantity as is necessary to cause the ground waste to flow readily through the sewer system. The waste shall be ground to the point where it is capable of meeting the following requirements:

a. At least 40 percent shall pass a No. 8 sieve;

b. At least 65 percent shall pass a No. 3 sieve;

c. One hundred percent shall pass a one-half-inch sieve; and

d. Sieves shall be U.S. Standard.

3. The use of garbage grinders for the purpose of preparing waste for deposit into the sewer system shall be limited to:

a. Residential premises;

b. Supermarkets, restaurants, hotels and establishments where food or drink is prepared and consumed on the premises. (Ord. 1816 § 2, 2007)

8.08.560 Dumping ground for solid waste or other materials.

No person shall permit any land owned, leased, occupied or controlled by him/her in the city to be used as a dumping ground for solid waste or other material of any kind whatsoever, and no person shall deposit any solid waste or other material upon any land in the city. (Ord. 1816 § 2, 2007)

8.08.570 Removal of litter required.

A. Procedures. The accumulation of litter on private property is declared to be a public nuisance. If the owner or occupant in control of any premises in the city fails to remove all litter which is located on the property after due warning or citation, the city manager shall issue a notice to the owner to remove the litter. The notice shall contain a

description of the property and state that, if the litter condition is not corrected within 10 days, the property will be cleaned by the city and the owner will be billed for the cleanup cost. Any city employee or contracting agent is expressly authorized to enter upon private property to remove accumulated litter. It is unlawful for any person to interfere, hinder or refuse to allow such employee or agent to enter upon private property for such purpose and to remove litter in accordance with the provisions of this article. Any person owning, occupying, renting, managing, leasing or controlling real property in the city shall have the right to remove litter or have the same removed at his/her own expense any time prior to the arrival of the city for such purpose.

B. Assessment of Costs.

1. The city manager shall keep an account of the cost to the city to remove the litter as provided for each separate lot or parcel of land, and shall place such account in a report and assessment list to be sent to the city council. The report shall identify each separate lot or parcel of land, and shall state the cost proposed to be assessed against it. The report shall be filed with the city clerk. The city clerk shall mail a notice to each name on the assessment list. The notice shall contain the following:

a. The cost of the litter removal;

b. The place and time of the city council hearing to consider and confirm the assessment report and list;

c. That failure to make any objection to the report and list shall be deemed a waiver; and

d. That, upon confirmation by the city council, the amount of the assessment shall be payable.

2. The assessments shall be confirmed by resolution of the city council, and the amount shall constitute a lien on the property assessed until paid. (Ord. 1816 § 2, 2007)

8.08.580 Construction and demolition site solid waste.

It shall be the duty of the owner, agent or contractor in charge of any construction or demolition site to have adequate containers on the site for the disposal of solid waste to prevent litter generation. Owner, agent or contractor shall make appropriate arrangements for the collection of solid waste by

8.08.590

franchisee or for transportation of such material to an authorized facility for final disposition pursuant to LMC 8.08.030(A). (Ord. 1816 § 2, 2007)

8.08.590 Transportation of loose cargo.

It is unlawful for any person to transport solid waste, compostable materials, recyclable materials, construction and demolition debris or any other loose cargo by truck or other motor vehicle within the city unless such cargo is covered and secured in such manner as to prevent depositing of litter on public and private property. (Ord. 1816 § 2, 2007)

8.08.600 Vehicle presumption.

In those cases of littering from vehicles where the violators cannot be apprehended immediately, a rebuttable presumption shall be applied that the registered owner of the vehicle committed the violation. (Ord. 1910 § 8, 2010; Ord. 1816 § 2, 2007. Formerly 8.08.610)

8.08.610 Door-to-door handouts.

Persons distributing literature door-to-door shall not deposit it on public property and shall distribute it in such a way that it is not blown from the place of distribution. (Ord. 1910 § 8, 2010; Ord. 1816 § 2, 2007. Formerly 8.08.620)

8.08.620 Securing potential waste.

All receptacles, containers, storage areas, and vehicles containing solid waste, recyclable materials, or compostable materials shall be sufficiently covered or otherwise secured to prevent such material from escaping. (Ord. 1910 § 8, 2010; Ord. 1816 § 2, 2007. Formerly 8.08.630)

8.08.630 Commercial litter maintenance.

Persons in possession or control of commercial premises shall keep those exterior portions of the premises which are accessible or viewable by the public, including but not limited to areas used for parking, doorways, and alleys, and the area between the face of the curb line abutting the properties and the nearest building thereon, free of all waste matter. (Ord. 1910 § 8, 2010; Ord. 1816 § 2, 2007. Formerly 8.08.640)

8.08.640 Distribution of merchandise.

Persons distributing merchandise of any kind, including food and beverages, shall provide adequate disposal and recyclable materials containers, and frequent enough removal of their contents, to enable patrons to deposit all waste material generated by the merchandise into the containers. (Ord. 1910 § 8, 2010; Ord. 1816 § 2, 2007. Formerly 8.08.650)

8.08.650 Enforcement.

This chapter may be enforced by the police department, the fire department and employees of the public service department, as authorized by the city manager. (Ord. 1910 § 8, 2010; Ord. 1816 § 2, 2007. Formerly 8.08.660)

Article VIII. Container Enclosure Facilities

8.08.700 Purpose of article.

Public Resources Code Section 42900 et seq. establishes the following:

A. By September 1, 1994, a local agency must adopt an ordinance for collecting and loading recyclable materials in development projects or adopt the state model ordinance.

B. The local agency shall enforce the local ordinance or state model ordinance.

C. Cities and counties must divert 50 percent of all solid waste by January 1, 2000, through source reduction, recycling and composting activities. Diverting 50 percent of all solid waste requires the participation of the residential, commercial, industrial and public sectors.

D. The lack of adequate areas for collecting and loading recyclable materials compatible with surrounding land uses is a significant impediment to diverting solid waste and constitutes an urgent need for state and local agencies to address access to solid waste for source reduction, recycling and composting activities. This article is intended to help meet these needs.

E. As well, this article establishes the requirements for providing solid waste, recyclable materials and compostable materials enclosure areas. It is intended that such areas be provided in order to obtain the consolidation of solid waste, recyclable materials and compostable materials for disposal or processing in a manner that will ensure the public health, safety and welfare. (Ord. 1816 § 2, 2007)

8.08.710 Enclosure facilities required.

The owner or occupant of land or buildings used for any purpose shall provide and maintain the enclosure facilities as required by LDC 6.03.130. (Ord. 1901 § 3 (Exh. A § 15), 2010; Ord. 1816 § 2, 2007)

Article IX. Street Sweeping Services**8.08.800 Purpose of article and findings.**

The city council hereby finds and declares as follows:

A. It is the policy of the city that the accumulation of debris in the streets in the city of Livermore be handled in a safe, sanitary, routine and efficient manner so as to maximize the reduction of material that might otherwise enter the storm drain system and contaminate area creeks, and maintain the good condition, cleanliness and safety of city rights-of-way, medians and other public areas.

B. Street sweeping is a core governmental service necessary for the public health, sanitation, safety and welfare of all the residents of the city of Livermore. It supplements solid waste collection by the franchisee.

C. The city currently has approximately 9,100 residential and commercial curb miles.

D. The Alameda Countywide Clean Water Program's Stormwater Quality Management Plan (SWMP) is the basis of the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued by the Regional Water Quality Control Board. The SWMP, in conjunction with the NPDES permit adopted by the Regional Water Quality Control Board, meets the requirements of the Federal Clean Water Act for stormwater discharges to reduce pollutants to the maximum extent possible. The SWMP contains a number of performance standards including the requirement for a fixed street sweeping schedule, leaf removal and routine maintenance activities to maximize reduction of pollutants.

E. It is the city's intention that street sweeping services be financed by a combination of moneys collected through the solid waste collection fees and Alameda Countywide Clean Water Program. The purpose of this article is to authorize the collection of some component through the solid waste collection fees.

F. The fee for street sweeping services is based on the cost of operation, maintenance, and short- and long-term capital expenditures and apportioned for the number of miles swept. It does not exceed the estimated reasonable cost of the service.

G. This article is categorically exempt under the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15301. (Ord. 1827 § 1, 2007)

8.08.810 Definitions.

In this article:

"Street sweeping services" includes the activity of street sweeping, in residential and commercial areas of the city, the operation and maintenance of street sweeping equipment, and the purchase of new street sweeping equipment as needed.

"Street" includes all streets with or without medians, avenues, lanes, alleys, courts, parking lots, paths or other public ways in the city which have been or may hereafter be designated and open to public use (LMC 12.08.010(D)). (Ord. 1827 § 1, 2007)

8.08.820 Fees.

A. Amount of Fee. The city council may from time to time establish fees for street sweeping services. The amount of the fee shall be established by resolution of the city council following a noticed public hearing. The fee may be combined with the fees for solid waste collection services.

B. Character of Fee. The city council has determined that the fee is related to the cost of the service provided and shall not exceed the estimated reasonable costs of the service. This fee is not imposed as an incident of property ownership within the meaning of Proposition 218 California Constitution Article XIID, Section 6.

C. Collection. Each owner and occupant of the city receiving waste collection services from the franchisee shall be billed by the franchisee a fee for street sweeping services in accordance with the rates established by the city council. The fee shall be collected by the franchisee as part of the solid waste collection fee, in conformance with LMC 8.08.130. (Ord. 1827 § 1, 2007)

8.08.830 Transfer, deposit, use and accounting of fees.

A. Transfer. The franchisee shall convey the street sweeping services fee to the city in accordance with the terms of the franchise agreement. (See Franchise Agreement, Section 7.4.)

B. Deposit. When conveyed to the city, the fees shall be kept in a separate line item account together with any interest earned.

C. Use of Fee. The fees shall be used only to defray the cost of street sweeping services, as defined in LMC 8.08.810, including operations, maintenance, and short- and long-term capital expenditures. (Ord. 1827 § 1, 2007)

Article X. Refuse Vehicle Impact Fee

8.08.900 Purpose of article and findings.

The city council hereby finds and declares as follows:

A. Traffic associated with solid waste, recycling and yard waste collection vehicles (refuse vehicles) places a significant burden on city streets and is a significant cause of street damage; and

B. The city council finds that unless certain actions are taken, pavement damage related to refuse vehicles will result in adverse impacts including accelerated deterioration of pavement conditions on city streets, reduced ride quality, increased vehicle repairs, increased energy consumption, and disruption to traffic flow. Implementation of the refuse vehicle impact fee will prevent these undesirable consequences, allowing the city to maintain the streets and roads in a good condition and avoid the deterioration of pavement to the point where extensive rehabilitation or reconstruction becomes necessary at a higher cost; and

C. The city council also finds that, in the absence of this chapter imposing a refuse vehicle impact fee, existing and future sources of revenue will be inadequate to fund a substantial portion of pavement repair for the city’s streets and roads necessary to avoid unacceptable pavement condition indexes in the city created by refuse vehicle impacts; and

D. Accordingly, it is the intent of the city council to adopt by this chapter a fair and equitable method of securing some of the funds necessary to

repair the damage caused to city streets and roads as a result of refuse vehicles to preserve acceptable pavement conditions throughout the city; and

E. The city commissioned an independent study that determined the annual street repair costs attributable to damage caused by refuse vehicles is approximately \$838,000 annually; and

F. The city council has considered that independent study analyzing the cost to repair street damage caused by refuse vehicles; and

G. The city council has determined that the cost incurred by the city for such street repair resulting from refuse vehicles should be defrayed by the imposition of fees charged by the city’s franchised solid waste services provider to cover at least a portion of those costs; and

H. The city council has determined that the following fees will cover a portion of the costs to the city for its street repair costs resulting from refuse vehicles; and

I. The city council is aware of and understands the preemption issue presented by California Vehicle Code Section 9400.8; and

J. The fee imposed by this chapter is distinguishable from the fee found to be preempted by “County Sanitation District No. 2 v. the County of Kern” in that the refuse vehicle impact fee is based on reasonable costs of repairing and restoring streets to previous levels whereas the county of Kern imposed its fee pro rata based on the number of tons hauled in the county; and

K. The refuse vehicle impact fee is a regulatory fee imposed for the general welfare of the city and as an exercise of the city’s police power pursuant to Article XI, Section 7 of the California Constitution; and

L. The city does not grant privileges for using city streets. City streets are open to all members of the driving public generally; and

M. Refuse vehicles have the same right as any other vehicle to drive over city streets; and

N. This chapter may not be enforced by an injunction which prevents a construction vehicle from driving over city streets until payment of the fee is made; and

O. The proposed refuse vehicle impact fee has been noticed consistent with California Government Code Section 66018 and a hearing was held on the matter on June 25, 2007. (Ord. 1818 § 1, 2007)

8.08.901 Fees.

A. An annual refuse vehicle impact fee of \$838,000 shall be assessed to the city's franchised solid waste collection services provider and remitted to the city on a monthly basis. The fee may be amended from time to time by resolution of the city council.

B. Character of Fee. The city council has determined that the fee is related to the cost of repairs provided and shall not exceed the estimated reasonable costs of the repair. This fee is not imposed as an incident of property ownership within the meaning of Proposition 218, California Constitution, Article XIID, Section 6.

C. Collection. Each owner and occupant of the city receiving waste collection services from the franchisee shall be billed by the franchisee a fee for refuse vehicle impact in accordance with the rates established by the city council. The fee shall be collected by the franchisee as part of the solid waste collection fee, in conformance with LMC 8.08.130. (Ord. 1818 § 1, 2007)

8.08.902 Transfer, deposit, use and accounting of fees.

A. Transfer. The franchisee shall convey the refuse vehicle impact fee to the city in accordance with the franchise agreement on a monthly basis.

B. Deposit. When conveyed to the city, the fees shall be kept in a separate line item account together with any interest earned.

C. Use of Fee. The fees shall be used only to defray the costs of street repair associated with refuse vehicular impact. (Ord. 1818 § 1, 2007)

Article XI. Neighborhood Preservation Clean-Up Services**8.08.1000 Purpose of article and findings.**

The city council hereby finds and declares as follows:

A. At the direction of the city council, a comprehensive neighborhood preservation program was established in 2002; and

B. The creation of a neighborhood clean-up program has improved the appearance and the quality of life in targeted areas through an innovative collaboration between the city, other agencies and affected residents; and

C. City staff has worked with the franchise solid waste hauler for the provision of dumpsters and other resources to assist residents with neighborhood improvement and clean-up efforts; and

D. There is a direct relationship between solid waste issues and the demand for neighborhood preservation clean-up services. During the years of 2004, 2005 and 2006, the city's neighborhood preservation division responded to 2,729 complaints directly related to solid waste, which represents approximately 25 percent of the total number of neighborhood preservation investigations; and

E. Typical types of complaints that would be addressed by the neighborhood preservation clean-up services program include illegal dumping, overflowing waste receptors, improper storage or placement of waste containers, accumulation of solid waste on private property but stored in public view, and failure to set up an account for the collection and disposal of solid waste as required by the LMC 8.08.030. Left unaddressed, solid waste complaints adversely affect the quality of life for residents and detract from the appearance of the community as a whole; and

F. An effective neighborhood preservation program improves the quality of life for city residents, reduces blight and can potentially increase property values; and

G. It is the city's intention that the neighborhood preservation clean-up services program be financed by a combination of moneys collected through the solid waste collection fees and citation revenue, building permit fees, and the general fund. The neighborhood preservation clean-up services program would fund 25 percent of the existing neighborhood preservation programs through a modest increase in the solid waste franchise agreement; and

H. The city council has determined that the following fees will cover 25 percent of the costs to the city for costs associated with the neighborhood clean-up programs implemented by the neighborhood preservation programs resulting from complaints and problems related to the accumulation of solid waste; and

I. The proposed neighborhood preservation clean-up services program has been noticed consistent with California Government Code Section 66018 and a hearing was held on the matter on June 25, 2007. (Ord. 1827 § 2, 2007)

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8.08.1010 Fees.

A. Amount of Fee. The city council may from time to time establish fees for neighborhood preservation clean-up services. The amount of the fee shall be established by resolution of the city council following a noticed public hearing. The fee may be combined with the fees for solid waste collection services.

B. Character of Fee. The city council has determined that the fee is related to the cost of the service provided and shall not exceed the estimated reasonable costs of the service. This fee is not imposed as an incident of property ownership within the meaning of Proposition 218 California Constitution Article XIID, Section 6.

C. Collection. Each owner and occupant of the city receiving waste collection services from the franchisee shall be billed by the franchisee a fee for neighborhood preservation clean-up services in accordance with the rates established by the city council. The fee shall be collected by the franchisee as part of the solid waste collection fee, in conformance with LMC 8.08.130. (Ord. 1827 § 2, 2007)

8.08.1020 Transfer, deposit, use and accounting of fees.

A. Transfer. The franchisee shall convey the neighborhood preservation clean-up services program fee to the city on a monthly basis.

B. Deposit. When conveyed to the city, the fees shall be kept in a separate line item account together with any interest earned.

C. Use of Fee. The fees shall be used only to defray the costs of clean-ups associated with solid waste clean-up service provided by the neighborhood preservation clean-up services program. (Ord. 1827 § 2, 2007)

Chapter 8.10

SMOKING POLLUTION CONTROL*

Sections:

- 8.10.010 Title.
- 8.10.020 Purpose and findings.
- 8.10.030 Definitions.
- 8.10.040 Application in city facilities.
- 8.10.050 Prohibition of smoking in public places.
- 8.10.060 Regulation of smoking in places of employment.
- 8.10.070 Optional smoking areas.
- 8.10.080 Posting of signs.
- 8.10.090 Tobacco samples prohibited.
- 8.10.100 Tobacco vending machines prohibited.
- 8.10.110 Enforcement.
- 8.10.120 Nonretaliation.
- 8.10.130 Violations and penalties.

*Prior legislation: Ord. 1182.

8.10.010 Title.

This chapter shall be known as the "Smoking Pollution Control Ordinance." (Ord. 1415 § 1, 1994)

8.10.020 Purpose and findings.

A. The city council finds as follows:

1. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and

2. The U.S. Environmental Protection Agency has determined that secondhand smoke is a Class A carcinogen for which there is no safe exposure level; and

3. Reliable studies have shown that breathing secondhand smoke is a particular health hazard for certain population groups, including children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

4. Health hazards induced by breathing secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and

5. Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing secondhand smoke may experience a

loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and

6. The simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

7. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places and places of employment.

B. The city council finds and declares that the purposes of this chapter are:

1. To protect the public health and welfare by prohibiting smoking in public places and in places of employment; and

2. To help people to avoid becoming addicted, and to help people who wish to quit smoking, by limiting their unintentional exposure to smoking, tobacco products and inducements to smoke; and

3. To strike a reasonable balance between the needs of smokers and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air shall have priority;

4. To encourage all business and places of employment, which are exempt from the provisions of this chapter, to voluntarily become smoke-free as soon as practicable. (Ord. 1415 § 1, 1994)

8.10.030 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

A. "Bar" means an area within, part of or associated with a restaurant, which is not a freestanding bar as defined in subsection H of this section, and which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which serving food and providing coin-operated amusement devices is only incidental to the consumption of such beverages.

B. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

C. "Designated smoking room" means a room, with a floor area no greater than 25 percent of the total floor area of the establishment in which it is located, that has been designated as a smoking area, and that has been posted with the appropriate signs under LMC 8.10.080. The following requirements apply to a designated smoking room:

1. The room must have a separate heating, ventilation and air-conditioning system (HVAC) designed such that none of the air from the room will be recirculated into other areas of the building.

2. The room shall be completely separated from the remainder of the building by solid partitions or glazing without openings other than doors, and all doors leading to the room shall be self-closing. The doors shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top.

3. Air from the room must be directly exhausted to the outside by an exhaust fan. Air from the smoking room must not be recirculated to other parts of the building. Pressure in the room must be less than in the surrounding area to make sure smoke does not drift to surrounding spaces.

4. The ventilation system must provide the smoking room with 60 cubic feet per minute (CFM) of supply air per smoker.

5. Nonsmokers should not have to use the smoking room for any purpose. The smoking room must be located in a nonwork area where no one, as part of his or her work responsibilities is required to enter during the time it is used as a designated smoking room.

D. "Dining area" means any area containing a counter or tables where meals are served.

E. "Employee" means any person who is employed in consideration for direct or indirect monetary wages or profit, and any person who volunteers services for a nonprofit entity or public agency.

F. "Employer" means any person, partnership, corporation or nonprofit entity, including a municipal corporation or other public agency, which employs one or more persons.

G. "Enclosed" means closed in by a roof and walls on all sides with appropriate openings for ingress and egress.

H. "Freestanding bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages, and which meets

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the following requirements if there are other uses within the same building:

1. The bar must have a separate heating, ventilation and air-conditioning system (HVAC) designed such that none of the air from the bar will be recirculated into other areas of the building.

2. The bar shall be completely separated from the remainder of the building by solid partitions or glazing without openings other than doors, and all doors leading to the bar and shall be self closing. The doors shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top.

3. Air from the bar must be directly exhausted to the outside by an exhaust fan. Air from the bar must not be recirculated to other parts of the building. Pressure in the room must be less than in the surrounding area to make sure smoke does not drift to surrounding spaces.

4. The ventilation system must provide the smoking room with 60 cubic feet per minute (CFM) of supply air per smoker.

I. "Place of employment" means any area under the control of a public or private employer where employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms and classrooms, cafeterias and hallways.

J. "Pool vehicle" means an automobile, truck or van, owned, leased or otherwise controlled by an employer, which is available, by advance request, reservation or otherwise, for the use in the course of employment, of any employee or employees.

K. "Public place" means any area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms.

L. "Reasonable distance" shall mean any distance necessary to ensure that persons in an area where smoking is prohibited are not exposed to secondhand smoke created by smokers near the area. The determination of the city manager shall be final in any disputes relating to reasonable distance for smoking near places regulated by this chapter.

M. "Restaurant" means any coffee shop, cafeteria, tavern, sandwich stand, soda fountain, private or public school cafeteria, and any other eating establishment, organization, club, boarding-house, or guest house, which gives or offers food for sale to the public, guests, patrons or employees.

N. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco or smoking products and accessories.

O. "Service line" means any line at which one or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money.

P. "Smoking" means inhaling, exhaling, burning or carrying any lighted pipe, cigar, cigarette, or similar article of any kind.

Q. "Sports arena" means bowling centers, sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events. (Ord. 1415 § 1, 1994)

8.10.040 Application in city facilities.

Notwithstanding LMC 8.10.070, smoking shall be prohibited in all city vehicles, buildings and facilities, including outdoor dining areas and free-standing bars. (Ord. 1415 § 1, 1994)

8.10.050 Prohibition of smoking in public places.

A. Smoking shall be prohibited in all enclosed public places within the city, including the following:

1. Elevators and restrooms;
2. Buses, taxicabs and other means of public transit, and ticket, boarding and waiting areas of public transit depots;
3. Service lines;
4. Retail stores, except retail tobacco stores;
5. Retail food marketing establishments, including grocery stores and supermarkets;
6. All areas available to and customarily used by the general public in all businesses, non-profit entities and public agencies patronized by the public, including, but not limited to, business offices, banks, hotels and motels, except as provided in subsection (A)(15) of this section;

7. Restaurants, including bars and banquet rooms in, open to or directly accessible from restaurants;

8. Bars;

9. Bingo parlors, card clubs, amusement arcades, and similar places of amusement and recreation;

10. Any building not open to the sky which is used primarily for exhibiting any motion picture, stage drama, lecture, musical recital, or other similar performance, except to the extent that smoking is part of any such production;

11. Sports arenas and convention halls;

12. Stadiums, amphitheaters and similar places of assembly which are open to the sky;

13. Health and residential and day care facilities, including, but not limited to, nursing homes, adult care facilities, child care facilities including family day care homes, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices;

14. Polling places;

15. Private hotel and motel rooms rented to guests, except that up to 25 percent of such rooms may be designated for smoking guests, if the rooms designated as smoking are served by a heating, ventilation and air-conditioning system (HVAC) that does not serve any of the rooms designated as nonsmoking, and that is designed such that none of the air from the smoking rooms will be recirculated into other areas of the building;

16. Private residences, during the hours when engaged in business as a family day care home or health facility;

17. Enclosed lobbies, hallways and other enclosed common areas in apartment buildings, including condominiums, in retirement facilities, and in other multiple-family residential facilities.

B. Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment. (Ord. 1415 § 1, 1994)

8.10.060 Regulation of smoking in places of employment.

A. Every employer shall provide a smoke-free work place for all employees, except in those areas designated in LMC 8.10.070.

B. Every employer shall post "No Smoking" or "Smoke Free" signs in accordance with LMC 8.10.080.

C. Smoking outside of the work building shall occur at a reasonable distance from the building to insure that smoke does not enter the building through doors and windows and affect occupants therein, or those entering or leaving the building.

D. Smoking shall be prohibited in all enclosed facilities a place of employment (except in designated smoking rooms as defined by LMC 8.10.030(C)). This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

E. Every employer shall communicate this smoking policy to all employees within three weeks of its adoption, and shall communicate the policy to a new employee upon hiring.

F. Every employer shall supply a written copy of the smoking policy upon request to any employee or prospective employee. (Ord. 1415 § 1, 1994)

8.10.070 Optional smoking areas.

A. Notwithstanding LMC 8.10.050 and 8.10.060 to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

1. Private residences except during the hours when engaged in business as a family day care home or a health care facility;

2. Retail tobacco stores (as defined by LMC 8.10.030(N));

3. Outdoor areas, including outdoor dining areas, a reasonable distance from any area designated nonsmoking in this chapter;

4. Freestanding bars (as defined by LMC 8.10.030(H));

5. Designated smoking rooms (as defined by LMC 8.10.030(C)).

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment. (Ord. 1415 § 1, 1994)

8.10.080

8.10.080 Posting of signs.

A. Where signs are required by this section, the owner, operator, manager or other person having control of a building shall conspicuously post in such building "Smoking" and "No Smoking" signs, whichever are appropriate, with letters of not less than three inches in height, or the international "Smoking" or "No Smoking" symbol (consisting of a pictorial representation or enclosed in a red circle with a red bar across it for "No Smoking"), or the same information in another format approved by city manager.

B. Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium.

C. The owner, operator, manager or other person having control of a restaurant or other public place shall conspicuously post in, or at every entrance of, every restaurant or other public place, including all places described in LMC 8.10.050 when in or adjacent to a building, "No Smoking" signs and "Smoking" signs, when appropriate.

D. The owner, operator, manager or other person having control of every bar shall conspicuously post at every entrance of every bar, adjacent to any warning sign required under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), a "No Smoking" sign.

E. The owner, operator, manager or other person having control of the area shall remove all ash trays in any area designated nonsmoking. (Ord. 1415 § 1, 1994)

8.10.090 Tobacco samples prohibited.

No person shall knowingly distribute or furnish without charge, or cause to be furnished without charge to the general public, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, at any event open to the public, or in any public place, including, but not limited to, any right-of-way, mall or shopping center, park, or playground, except in retail tobacco stores. (Ord. 1415 § 1, 1994)

8.10.100 Tobacco vending machines prohibited.

No cigarette or other tobacco product may be sold, offered for sale, or distributed by or from a vending machine or other appliance, or any other

device designed or used for vending purposes. (Ord. 1415 § 1, 1994)

8.10.110 Enforcement.

The city manager, or his or her designee, shall administer and enforce the provisions of this chapter. (Ord. 1415 § 1, 1994)

8.10.120 Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter. (Ord. 1415 § 1, 1994)

8.10.130 Violations and penalties.

A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to this chapter to fail to ensure compliance with its provisions.

B. It is unlawful for any person to smoke in any area designated nonsmoking under the provisions of this chapter. (Ord. 1415 § 1, 1994)

Chapter 8.12

DRUG PARAPHERNALIA

Sections:

- 8.12.010 Findings.
- 8.12.020 Definitions.
- 8.12.030 Possession of drug paraphernalia.
- 8.12.040 Manufacture or delivery of drug paraphernalia.
- 8.12.050 Advertisement of drug paraphernalia.
- 8.12.060 Civil forfeiture.
- 8.12.070 Interpretation.
- 8.12.080 Special provisions.
- 8.12.090 Severability.

8.12.010 Findings.

The Livermore city council has become aware of and is concerned over the general proliferation of “head shops” and other establishments engaged in the sale of paraphernalia associated with drug use. The city council finds that such establishments serve only to entice young people and others to abuse substances which are known to be harmful and unsafe for human consumption. The city council further finds that this situation has created a problem of such large proportions as to require further legislation on the subject. (Ord. 1222 § 1, 1987)

8.12.020 Definitions.

A. For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. “Controlled substance” means marijuana, hashish, PCP, and any controlled substances as defined in the Controlled Substances Act.

2. “Controlled Substances Act” means the California Uniform Controlled Substances Act (commencing with Section 11000 of the Health and Safety Code of the State of California).

3. “Drug paraphernalia” means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act. It includes, but is not limited to:

a. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

b. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

c. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

d. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

e. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

g. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

h. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

i. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

j. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

k. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

l. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

i. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without

8.12.030

screens, permanent screens, hashish heads, or punctured metal bowls;

- ii. Water pipes;
- iii. Carburetion tubes and devices;
- iv. Smoking and carburetion masks;
- v. Roach clips; meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- vi. Miniature cocaine spoons, and cocaine vials;
- vii. Chamber pipes;
- viii. Carburetor pipes;
- ix. Electric pipes;
- x. Air-driven pipes;
- xi. Chillums;
- xii. Bonges;
- xiii. Ice pipes or chillers.

B. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of any owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
3. The proximity of the object, in time and space, to a direct violation of the Controlled Substances Act;
4. The proximity of the object to controlled substances;
5. The existence of any residue of controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows or should reasonably know, intend use the object to facilitate a violation of the Controlled Substances Act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of the Controlled Act shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;

10. The manner in which the object is displayed for sale;

11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

13. The existence and scope of legitimate uses for the object in the community;

14. Expert testimony concerning its use.

C. Except as otherwise provided in this section, or unless the context otherwise requires, in interpreting or applying the provisions of this chapter, words which are used in this chapter and which are defined in Chapter 1 of the Controlled Substances Act shall have the meaning ascribed to them in Chapter 1 of the Controlled Substances Act. (Ord. 1222 § 1, 1987)

8.12.030 Possession of drug paraphernalia.

It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. Any person who violates this section is guilty of an infraction. (Ord. 1222 § 1, 1987)

8.12.040 Manufacture or delivery of drug paraphernalia.

It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. Any person who violates this section is guilty of a misdemeanor. (Ord. 1222 § 1, 1987)

8.12.050 Advertisement of drug paraphernalia.

It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a misdemeanor. (Ord. 1222 § 1, 1987)

8.12.060 Civil forfeiture.

A. All drug paraphernalia as defined by LMC 8.12.020 are subject to forfeiture.

B. Drug paraphernalia used or possessed in violation of this chapter or the Controlled Substances Act may be seized by any peace officer and in aid of such seizure a search warrant may be issued as prescribed by law. Drug paraphernalia seized as provided in this section shall be disposed of as provided in Chapter 8 (commencing with Section 11470) of the Controlled Substances Act. (Ord. 1222 § 1, 1987)

8.12.070 Interpretation.

In determining whether a violation of the provisions of this chapter has occurred, the court or other authority shall apply the following criterion: Each defendant charged with violating this chapter must have general criminal intent with respect to the offense alleged before a violation may be deemed to have occurred. With respect to LMC 8.12.040, the necessary criminal intent will exist if the defendant charged with a violation thereof actually knew or reasonably should have known that such defendant was aiding or facilitating an act proscribed by LMC 8.12.040. (Ord. 1222 § 1, 1987)

8.12.080 Special provisions.

A. Notwithstanding the provisions of LMC 8.12.030, 8.12.040, or 8.12.050, if any drug paraphernalia is used, intended for use, possessed with intent to use, delivered for use, possessed with intent to deliver for use, or manufactured with intent to deliver for use, in connection with a violation of subdivision (b) of Section 11357, or subdivision (b) of Section 11360, of the Controlled Substances Act, the punishment which may be imposed for conviction of a violation of LMC

8.12.030, 8.12.040, or 8.12.050 shall not be greater than the punishment which may lawfully be imposed for conviction of a violation of Section 11357, or Section 11360, of the Controlled Substances Act.

B. To the extent permitted by law, the provisions of Sections 11361.5 and 11361.7 of the Controlled Substances Act shall apply to any arrest or conviction for which a special penalty is provided pursuant to the provisions of LMC 8.12.090. (Ord. 1222 § 1, 1987)

8.12.090 Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. (Ord. 1222 § 1, 1987)

Chapter 8.14

**NEIGHBORHOOD NUISANCE
ABATEMENT**

Sections:

Article I. General Provisions

8.14.010 Definitions.

Article II. Nuisances

8.14.020 Unlawful property nuisance.

8.14.030 Declaration of public nuisance.

Article III. Abatement Procedure

8.14.040 Notification of nuisance.

8.14.050 Administrative hearing to abate nuisance.

8.14.060 Notice of hearing.

8.14.070 Administrative hearing by hearing officer.

8.14.080 Procedure in absence of appeal.

8.14.090 Appeal procedure – Hearing by city manager.

8.14.095 Alternative procedure – Hearing officer.

8.14.100 Decision by city manager.

8.14.110 Hearing procedure before hearing officer and city manager.

8.14.120 Abatement by city.

8.14.130 Limitation of filing judicial action.

8.14.140 Demolition.

8.14.150 Notice of intent to demolish.

8.14.160 Record of cost of abatement.

Article IV. Lien Procedure

8.14.170 Assessment lien.

8.14.180 Alternative actions available – Violation an infraction.

Article I. General Provisions

8.14.010 Definitions.

The following words and phrases, wherever used in this chapter, shall be construed as follows, unless the context indicates otherwise:

A. “Building” means any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or property.

B. “City manager” means the city manager or his duly authorized representative.

C. “Enforcement officer” means the chief building inspector, chief of police, director of planning, fire marshal, their designees, or other enforcement official designated by the city manager.

D. “Hearing officer” means the zoning administrator or his designee.

E. “Owner” means any person owning property, as shown on the last equalized assessment roll for city taxes or the lessee, tenant or other person having control or possession of the property.

F. “Person” means any individual, partnership, corporation, association, or other organization, however formed.

G. “Property” means any real property, or improvements thereon, as the case may be. (Ord. 1261 § 1, 1988)

Article II. Nuisances

8.14.020 Unlawful property nuisance.

It is unlawful for any person owning, leasing, renting, occupying or having charge or possession of any property in the city to maintain or to allow to be maintained such property in such manner that any of the following conditions are found to exist thereon, except as may be allowed by this code:

A. The following, if visible from a public street:

1. The accumulation of litter or debris;

2. Overflowing trash, garbage or refuse cans or bins, boxes or other such containers stored in the front or side yards;

3. Packing boxes, lumber, junk, trash, salvage materials or other debris.

B. Nuisances dangerous to children and visible from a public street including abandoned, broken or neglected equipment, machinery, refrigerators, freezers, hazardous pools or ponds and excavations;

C. Broken or discarded furniture, household equipment and furnishings or shopping carts stored on the property for unreasonable periods and visible from a public street;

D. Overgrown vegetation likely to harbor rats or vermin, dead or hazardous trees, weeds or other vegetation constituting unsightly appearance, dangerous to public safety and welfare or detrimental to neighboring properties or property values and visible from a public street;

E. Graffiti or other words, letters or drawings which remain on the exterior of any building or fence for an unreasonable period and are visible from a public street;

F. Boats, trailers, vehicle parts or other articles of personal property which are abandoned or left in a state of partial construction or repair for an unreasonable period of time in front yards, side yards, driveways, sidewalks or walkways and are visible from a public street;

G. Camper shells which are left for an unreasonable period of time in front yards, driveways, side yards, sidewalks or walkways and are visible from a public street; and

H. Buildings which are abandoned, boarded up, partially destroyed, or left in a state of partial construction for an unreasonable period of time and such buildings which are unpainted or where the paint on the building exterior is mostly worn off. (Ord. 1261 § 1, 1988)

8.14.030 Declaration of public nuisance.

Any property found to be maintained in violation of the foregoing section is declared to be a public nuisance and shall be abated by rehabilitation, removal, demolition, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the city from enforcing other city ordinances or abating public nuisances in any other manner provided by law. (Ord. 1261 § 1, 1988)

Article III. Abatement Procedure

8.14.040 Notification of nuisance.

Whenever an enforcement officer determines that any property within the city is being maintained contrary to one or more of the provisions of LMC 8.14.020, he shall give written notice ("Notice to Abate") to the owner of said property specifying the section(s) being violated. Such notice shall set forth a reasonable time limit, in no event less than 10 working days, for correcting the

violation(s). Such notice shall be served upon the owner in accordance with LMC 8.14.060 covering service in person or by mail. (Ord. 1261 § 1, 1988)

8.14.050 Administrative hearing to abate nuisance.

In the event said owner shall fail to comply with the "Notice to Abate," the hearing officer shall conduct an administrative hearing to ascertain whether said violation constitutes a public nuisance. (Ord. 1261 § 1, 1988)

8.14.060 Notice of hearing.

Notice of said hearing shall be served upon the owner not less than 10 working days before the time set for the hearing. Notice of hearing shall be served in person or by certified mail to the owner's last known address. In addition a copy of the notice shall be posted on the property. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceeding hereunder. The notice shall contain:

A. The street address and other description as is required to identify the premises;

B. A description of the nuisance;

C. An order to appear before the enforcement officer at a stated time and place;

D. A statement advising the owner that if his property is found to constitute a public nuisance, and is not promptly abated by the owner, such nuisance may be abated by municipal authorities, and the cost of such abatement plus interest will be assessed upon the property and will constitute a lien upon such property until paid. He may also be cited for violation of this code and subject to a fine. (Ord. 1261 § 1, 1988)

8.14.070 Administrative hearing by hearing officer.

At the time stated in the notice, the hearing officer shall hear and consider all relevant evidence, objections or protests, and shall receive testimony under oath relative to such alleged public nuisance and to proposed rehabilitation, repair, removal or demolition of such property. Said hearing may be continued at the discretion of the hearing officer.

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If the hearing officer finds that such public nuisance does exist and that there is sufficient cause to rehabilitate, demolish, remove or repair the same, the hearing officer shall prepare findings and an order, which shall specify the nature of the nuisance, the method(s) of abatement and the time within which the work shall be commenced and completed. The hearing officer's determination of sufficient cause to rehabilitate, demolish, remove and repair such public nuisance shall be based in part upon the ability of the owner to pay for the costs of abatement of that public nuisance.

The order shall include reference to the right to appeal set forth in LMC 8.14.090. A copy of the findings and order shall be served on all owners of the subject property and posted on the property in accordance with LMC 8.14.040. (Ord. 1261 § 1, 1988)

8.14.080 Procedure in absence of appeal.

In the absence of any appeal, the property shall be rehabilitated, repaired, removed or demolished in the manner and means specifically set forth in the findings and order of the hearing officer. In the event the owner fails to abate the nuisance as ordered, the hearing officer shall cause same to be abated by city employees or private contract. The costs of such abatement shall be billed to the owner as specified in LMC 8.14.160. The hearing officer is expressly authorized to enter upon the property for such purposes. (Ord. 1261 § 1, 1988)

8.14.090 Appeal procedure – Hearing by city manager.

The owner may appeal the hearing officer's findings and order to the city manager by filing an appeal with the city manager within seven calendar days of the date of service of the hearing officer's decision. The appeal shall contain;

- A. A specific identification of the property;
- B. The names and addresses of all appellants;
- C. A statement of each appellant's legal interest in the property;
- D. A statement specifying the grounds for the appeal together with all material facts in support thereof;
- E. The signature of each appellant and the date of execution of the appeal document; and
- F. The verification of at least one appellant as to the truth of the matter stated in the appeal.

As soon as practicable after receiving the appeal, the city manager shall set a date to hear the appeal. Said date shall be not less than seven nor more than 30 calendar days from the date the appeal was filed. Each appellant shall be given written notice of the time and place of the hearing at least five calendar days prior to the date of the hearing. Notice shall be given in the same manner as in LMC 8.14.040. The hearing may be continued at the discretion of the city manager. (Ord. 1261 § 1, 1988)

8.14.095 Alternative procedure – Hearing officer.

A. As an alternative to hearing the appeal, the city manager may designate a hearing officer for the appeal of a neighborhood nuisance abatement decision by the zoning administrator or his/her designee. The hearing officer shall be an impartial person such as:

1. A city employee from a department which has no involvement in code enforcement nor is from a division of the community development department; or
2. A person selected randomly from a panel of law students and/or local attorneys willing to volunteer as a hearing officer.

B. Should the person seeking the appeal reject the hearing officer selected by the city manager, then the hearing officer shall be hired from an organization which provides such hearing officer services and the cost therefor shall be shared equally by the city and the person cited.

C. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon or affected by decision rendered or the amount of administrative citation fines upheld by the hearing officer, if any. (Ord. 1728 § 5, 2004)

8.14.100 Decision by city manager.

Upon conclusion of the hearing, the city manager shall determine whether the property or any part thereof, as maintained, constitutes a public nuisance to be abated. If the city manager so finds, he shall prepare a written order declaring the property to be a public nuisance, setting forth his findings and ordering the abatement of the nuisance by having the property rehabilitated, repaired, removed or demolished in the manner and means specified in the order. The city manager's decision to abate such

public nuisance shall be based in part upon the ability of the owner to pay for the costs of abatement of that public nuisance. The order shall set forth the time in which such work shall be completed by the owner; in no event shall this time be less than 30 days. A copy of the city manager's order shall be served upon the appellant(s) in accordance with LMC 8.14.040. Upon abatement in full of the nuisance, the proceedings under this chapter shall terminate. (Ord. 1261 § 1, 1988)

8.14.110 Hearing procedure before hearing officer and city manager.

All hearings shall be tape recorded. Hearings need not be conducted according to the technical rules of evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state. Oral evidence shall be taken only on oath or affirmation. Irrelevant and unduly repetitious evidence shall be excluded. (Ord. 1261 § 1, 1988)

8.14.120 Abatement by city.

If such nuisance is not abated as ordered by the city manager within said abatement period, the hearing officer shall cause the same to be abated by city employees or private contract. The hearing officer is expressly authorized to enter upon said property for such purposes. The cost, including incidental expenses, of abating the nuisance shall

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be billed to the owner and shall become due and payable 30 days thereafter. The term “incidental expenses” shall include, but not be limited to: personnel costs, both direct and indirect; costs incurred in documenting the nuisance; the actual expenses and costs of the city in the preparation of notices, specifications and contracts, and in inspecting the work; and the costs of printing and mailing required hereunder. (Ord. 1261 § 1, 1988)

8.14.130 Limitation of filing judicial action.

Any action appealing the city manager’s decision and order shall be commenced within 30 calendar days of the date of service of the decision. (Ord. 1261 § 1, 1988)

8.14.140 Demolition.

No property shall be found to be a public nuisance under LMC 8.14.070 and ordered demolished unless the order is based on competent sworn testimony and it is found that in fairness and in justice there is no way other than demolition reasonably to correct such nuisance. (Ord. 1261 § 1, 1988)

8.14.150 Notice of intent to demolish.

A copy of any order or resolution requiring abatement by demolition under LMC 8.14.070 shall be forthwith recorded with the county recorder. (Ord. 1261 § 1, 1988)

8.14.160 Record of cost of abatement.

The hearing officer shall keep an account of the cost, including incidental expenses, of abating such nuisance on each separate lot or parcel of land where the work is done by the city and shall render an itemized report in writing to the city council showing the cost of abatement, including any salvage value relating thereto; provided, that before said report is submitted to the city council, a copy of the same shall be posted for at least five days upon such property, together with a notice of the time when said report shall be heard by the city council for confirmation. A copy of said report and notice shall be served upon the owners of said property in accordance with the provisions of LMC 8.14.040 at least five calendar days prior to submitting the same to the city council. Proof of said posting and service shall be made by affidavit filed with the city clerk. (Ord. 1261 § 1, 1988)

Article IV. Lien Procedure

8.14.170 Assessment lien.

The total cost for abating such nuisance, as so confirmed by the city council, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the county recorder of a notice of lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.

After such confirmation and recordation, a certified copy of the council’s decision shall be filed with the county auditor-controller on or before August 1st of each year, whereupon it shall be the duty of said auditor-controller to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcel of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessment.

In the alternative, after such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

Such notice of lien for recordation shall be in form substantially as follows:

Notice of Lien

(Claim of City of Livermore)

Pursuant to the authority vested by the provisions of Chapter 8.14 LMC, a hearing officer of the City of Livermore did on or about the ____ day of _____, 19__, cause the property hereinafter described to be rehabilitated or the building or structure on the property hereinafter described, to be repaired or demolished in order to abate a public nuisance on said real property; and the City Council of the City of Livermore did on the ____ day of _____, 19__, assess the cost of such rehabilitation, repair or demolition upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Livermore does hereby claim a lien on such rehabilitation, repair, or demolition in the amount of said assessment, to wit: the sum of

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\$_____: and the same, shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinabove mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Livermore, County of Alameda, State of California, and particularly described as follows:

(description)

Dated this ____ day of _____, 19__.

_____ Hearing Officer
City of Livermore

(Ord. 1261 § 1, 1988)

**8.14.180 Alternative actions available –
Violation an infraction.**

Nothing in this chapter shall be deemed to prevent the council from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to the applicable law or from pursuing any other remedy available under applicable law. Violation of the provisions of this chapter constitutes an infraction, as set forth in Chapter 1.16 LMC. The city manager is designated as the enforcement authority. (Ord. 1261 § 1, 1988)

Chapter 8.16

RIGHT TO FARM

Sections:

- 8.16.010 Purpose and intent.
- 8.16.020 Definitions.
- 8.16.030 Right to farm restrictions.
- 8.16.040 Notification to transferees.
- 8.16.050 Properly operated farm not a nuisance.
- 8.16.060 Resolution of disputes.
- 8.16.070 Information coordinator.

8.16.010 Purpose and intent.

A. The purpose of this chapter is to:

1. Protect agricultural land uses and designations identified on the general plan and zoning map from conflicts with nonagricultural land uses that may result in financial hardship to agricultural operators or the termination of their operation;
2. Promote a good neighbor policy between agriculturalists and residents by advising purchasers and residents of property adjacent to or near agricultural operations of the inherent potential inconveniences associated with such purchase or residence including, but not limited to, the sounds, odors, dust and chemicals that may accompany agricultural operations, so that such purchasers and residents will understand, and be prepared to accept, such inconveniences;
3. Encourage the use of dispute resolution, rather than expensive court proceedings, to amicably resolve any complaints about agricultural operations; and
4. Promote ongoing communication between agricultural operators and residents of property near agricultural operations, and understanding by residents of typical agricultural practices.

B. It is the intent of the city council that no agricultural activity, operation or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality on nonagricultural land. (Ord. 1511 § 1, 1997)

8.16.020 Definitions.

For the purpose of this chapter, the following terms shall have the following meanings:

A. "Agricultural land" means those land areas of Alameda County specifically zoned as agricultural, planned development, or single-family residence (with the "-B-40" and "-B-E" combining districts only), and those land areas of the city of Livermore specifically zoned as planned development, planned development/agriculture or any other zoned land as defined by the city of Livermore zoning ordinance where the land use on the land within the city limits is agricultural.

B. "Agricultural operations" means any agricultural activity, operation, or facility including, but not limited to:

1. The cultivation and tillage of the soil;
2. Dairying;
3. The production, irrigation, frost protection, cultivation, growing, harvesting, and processing of any commercial agricultural commodity, including timber, viticulture, apiculture or horticulture;
4. The raising of livestock, fur-bearing animals, fish or poultry for commercial purposes or otherwise;
5. Agricultural spoils areas;
6. Public or private stables, corrals and riding academies; and
7. Any practices performed by a farmer or on a farm as incidental to or in conjunction with the above described activities, facilities and operations, including: the legal application of pesticides, herbicides, fungicides, rodenticides and fertilizers; use of farm equipment; storage and preparation of agricultural products for market, and delivery of such products to storage, market, or to carriers for transportation to market.

C. "Agricultural processing facilities or operations" means any agricultural processing activity, operation, facility, or appurtenance thereof, including, but not limited to:

1. The canning or freezing of agricultural products;
2. The processing of dairy products;
3. The production and bottling of beer and wine;
4. The processing of meat and egg products;
5. The drying of fruits and grains;
6. The packing and cooling of fruits and vegetables; and
7. The storage, warehousing or processing of any agricultural products for wholesale or retail markets.

8.16.030

D. "Livestock" means domestic animals customarily kept, used, maintained or raised on a farm or ranch, for commercial purposes or otherwise, including but not limited to horses, ponies, burros, mules, donkeys, cows, steers, sheep, goats, swine, rabbits, chicken, ducks, geese, or other fowl except roosters.

E. "Property" means any real property located within the city limits.

F. "Transferee" means any buyer or tenant of property.

G. "Transferor" means the owner and/or transferor of title of real property or seller's authorized selling agent as defined in Business and Professions Code Section 10130 et seq., or Health and Safety Code Section 18006, or a landlord leasing real property to a tenant.

H. "Transfer" means the sale, lease, trade, exchange, rental or gift of property. (Ord. 1511 § 1, 1997)

8.16.030 Right to farm restrictions.

A. As a condition of approval of a discretionary development permit, including, but not limited to, tentative subdivision and parcel maps, use permits, and rezoning, pre-zoning, and planned developments, relating to property located within 2,000 feet of agricultural land, agricultural operations or agricultural processing facilities or operations, every transferor of such property shall, upon transfer, insert the restriction recited below in the deed or other instrument transferring any right, title or interest in the property to a transferee.

RIGHT TO FARM RESTRICTION

The City of Livermore and Alameda County permit operation of properly conducted agricultural operations within the City and the County.

You are hereby notified that the property you are acquiring an interest in is located within 2,000 feet of agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facilities operations. Discomfort and inconvenience may include, but is not limited to, noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents and/or the operation of machinery (including aircraft) during any 24-hour period.

One or more of the inconveniences described above may occur as a result of agricultural operations which are in compliance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector.

Lawful ground rig or aerial application of pesticides, herbicides, fungicides, rodenticides and fertilizers occurs in farming operations. Should you be concerned about spraying, you may contact the Alameda County Agricultural Commissioner.

The City of Livermore's Right to Farm Ordinance does not exempt farmers, agricultural processors or others from compliance with the law. Should a farmer, agricultural processor or other person not comply with appropriate state, federal or local laws, legal recourse may be possible by, among other ways, contacting the appropriate agency.

This Right to Farm Restriction shall be included in all subsequent deeds and leases for this property until such time as the property is not located within 2,000 feet of agricultural land or agricultural operations as defined by Livermore Municipal Code Section 8.16.020.

B. The failure to include the restriction required by this section in any deed or instrument shall not invalidate any transfer. (Ord. 1511 § 1, 1997)

8.16.040 Notification to transferees.

A. Every transferor of property subject to the requirements of LMC 8.16.030 shall, upon transfer, also provide to any transferee the notice of right to farm recited below in writing. The notice of right to farm may be contained in any form of agreement or contract; however, the notice need be given only once in any transaction. The transferor shall acknowledge delivery of the notice and the transferee shall acknowledge receipt of the notice.

NOTICE OF RIGHT TO FARM

The City of Livermore and Alameda County permit operation of properly conducted agricultural operations within the City and the County.

You are hereby notified that the property you are acquiring an interest in is located within

The City of Livermore and Alameda County permit operation of properly conducted agricultural operations within the City and the County.

You are hereby notified that the property you are acquiring an interest in is located within 2,000 feet of agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facilities operations. Discomfort and inconvenience may include, but is not limited to, noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents and/or the operation of machinery (including aircraft) during any 24-hour period.

One or more of the inconveniences described above may occur as a result of agricultural operations which are in compliance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector.

Lawful ground rig or aerial application of pesticides, herbicides, fungicides, rodenticides and fertilizers occurs in farming operations. Should you be concerned about spraying, you may contact the Alameda County Agricultural Commissioner.

The City of Livermore's Right to Farm Ordinance does not exempt farmers, agricultural processors or others from compliance with law. Should a farmer, agricultural processor or other person not comply with appropriate state, federal, or local laws, legal recourse may be possible by, among other ways, contacting the appropriate agency.

This notification is given in compliance with the Livermore Municipal Code Section 8.16.040. By initialing below, you are acknowledging receipt of this notification.

Transferor's Initials

Transferee's Initials

B. The failure to give the notice required by this section shall not invalidate any transfer. (Ord. 1511 § 1, 1997)

8.16.050 Properly operated farm not a nuisance.

Agricultural operations shall not be considered a nuisance under this code unless such operations are deemed to be a nuisance under California Civil Code Sections 3482.5 and 3482.6. Agricultural and agricultural processing operations shall comply with all state, federal and local laws and regulations applicable to the operations. (Ord. 1511 § 1, 1997)

8.16.060 Resolution of disputes.

Any dispute or controversy that arises regarding any inconveniences or discomforts occasioned by agricultural or agricultural processing operations or facilities should be settled by direct negotiation of the parties involved. Any such dispute or controversy that cannot be settled by direct negotiation of the parties involved should be submitted to a private mediator, a community mediation service, or another agency which provides dispute resolution services prior to the filing of any court action. Any costs associated with negotiation, mediation or dispute resolution pursuant to this section shall be borne by the parties. (Ord. 1511 § 1, 1997)

8.16.070 Information coordinator.

Every developer of property within 2,000 feet of agricultural land, agricultural operations or agricultural processing facilities or operations shall designate an information coordinator familiar with agricultural practices and public information and conflict resolution methods to coordinate and facilitate communication between residents and agricultural operators, and provide information regarding agricultural practices, potential inconveniences associated with such practices, and grievance and dispute resolution procedures. (Ord. 1511 § 1, 1997)

Chapter 8.18

SHOPPING CARTS

Sections:

- 8.18.010 Findings and purpose.
- 8.18.020 Applicability.
- 8.18.030 Definitions.
- 8.18.040 Prohibitions.
- 8.18.050 Shopping cart identification signs.
- 8.18.060 Unauthorized removal or possession of a shopping cart.
- 8.18.070 Exception.
- 8.18.080 Mandatory plan to prevent cart removal.
- 8.18.090 Prevention plan timeline and approval process.
- 8.18.100 Plan modification.
- 8.18.110 Revocation of plan.
- 8.18.120 Penalties for failing to submit a prevention plan.
- 8.18.130 Authority to impound.
- 8.18.140 Notification for retrieval of abandoned carts.
- 8.18.150 Authority to store.
- 8.18.160 Administrative costs and fines.
- 8.18.170 Disposal of abandoned shopping carts.
- 8.18.180 Emergency services.
- 8.18.190 Enforcement.

8.18.010 Findings and purpose.

Abandoned shopping carts constitute a nuisance, create potential hazards to the public health and safety and interfere with pedestrian and vehicular traffic within the city. Wrecked, dismantled and/or abandoned shopping carts on public or private property create conditions that reduce property values and promote blight and deterioration within the city’s neighborhoods. The purpose of this chapter is to ensure that measures are taken by cart owners to prevent the removal of shopping carts from store premises. This chapter is based in part on California Business and Professions Code Section 22435 and following. (Ord. 1678 § 1, 2002)

8.18.020 Applicability.

This chapter applies to:

- A. Each business owner in the city if the business provides 25 or more shopping carts for customer use at any one business location; and
- B. Any person in possession of an off-site shopping cart. (Ord. 1678 § 1, 2002)

8.18.030 Definitions.

A. “Abandoned shopping cart” means any cart removed from a business establishment’s premises without the written permission of the owner and located on either public or private property.

B. “Neighborhood preservation manager” means the neighborhood preservation manager, or his or her designees.

C. “Business owner” means a person or establishment providing shopping carts for customers’ use.

D. “Premises” means the entire area owned or under the control of a business owner, including the parking area or other off-street area.

E. “Shopping cart” means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for transporting goods.

F. “Off-site shopping cart” means a shopping cart which has been removed from the business premises where it belongs without the written consent of the business owner. (Ord. 1678 § 1, 2002)

8.18.040 Prohibitions.

It is unlawful and a violation of this chapter for a business owner who provides 25 or more shopping carts to:

- A. Fail to affix an identifying sign to each shopping cart;
- B. Fail to submit a shopping cart plan in conformance with LMC 8.18.080;
- C. Fail to comply with an approved shopping cart plan; or
- D. Allow a shopping cart to be removed from the business premises. (Ord. 1678 § 1, 2002)

8.18.050 Shopping cart identification signs.

The owner of a business providing 25 or more shopping carts shall have a sign permanently affixed to each cart. A business owner providing fewer than 25 shopping carts may affix a sign to each cart. The sign shall include all of the following information:

- A. The identity of the owner or business, or both;
- B. A valid telephone number and address for returning the shopping cart;
- C. Notice to the public that the unauthorized removal of the cart from the premises of the business establishment, or the unauthorized possession

of the shopping cart, is a violation of state laws and a violation of city ordinance;

D. Notification of the procedure for authorized removal of the shopping cart from the premises. (Ord. 1678 § 1, 2002)

8.18.060 Unauthorized removal or possession of a shopping cart.

It is unlawful for any person to do any of the following, if a shopping cart has a permanently affixed sign pursuant to LMC 8.18.050:

A. To remove a shopping cart from the premises or parking area of a business establishment with the intent to temporarily or permanently deprive the owner of its possession.

B. To leave or abandon a shopping cart at a location other than the premises or parking area of the retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

C. To alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

D. To be in possession of any shopping cart while that cart is not located on the premises or parking lot of a business establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart. (Ord. 1678 § 1, 2002)

8.18.070 Exception.

A violation of this chapter shall not apply to carts that are removed for the purposes of repair or maintenance with written consent of the business owner. (Ord. 1678 § 1, 2002)

8.18.080 Mandatory plan to prevent cart removal.

Every owner of a business providing 25 or more carts shall submit to the neighborhood preservation manager, obtain approval from him or her, and effectively implement a shopping cart plan in accordance with this section. Such plan shall include all the following elements:

A. Identifying Information. Name, address and telephone number of the business, and the name

and telephone number of the on-site manager or designated agent.

B. Required Information. The number of on-site shopping carts, and the requirements for sign identification on carts.

C. Public Notices. A description of a customer education process by which the owner will inform customers that the removal or off-site possession of carts is a violation of state laws and this chapter. This information may include business signs posted in prominent places, flyers, warnings on shopping bags, direct mail, in-store announcements, or any other form of written notification demonstrated to be effective.

D. Required Signs On Property. Signs shall be placed in pertinent places on the business premises that warn customers that cart removal is prohibited and constitutes a violation of state and city law.

E. Employee Training. A description of ongoing employee-training program to educate existing and new employees about the shopping cart plan.

F. Loss Prevention Measures. A description of the measures that the owner will implement to prevent the removal of shopping carts from the premises. These measures may include, but are not limited to, devices on shopping carts that automatically disable them if they are removed from the premises, employment of personnel to advise and deter customers from removing shopping carts, installation of obstacles to prevent the removal of shopping carts, collection of security deposits for use of all carts, or the rental or sale of utility carts that can be temporarily or permanently used to transport purchases.

G. Retrieval Measures. Specific measures to retrieve shopping carts that are removed from the owner's premises on a weekly basis and within 72 hours of notice from the city under LMC 8.18.140. Such measures may include, but are not limited to, employment of personnel or contractors to retrieve shopping carts. The neighborhood preservation manager may require retrieval on a more frequent time schedule. (Ord. 1678 § 1, 2002)

8.18.090 Prevention plan timeline and approval process.

A proposed plan for preventing shopping cart removal and/or an evaluation report shall be submitted to the neighborhood preservation manager

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for approval within 60 days after the adoption of the ordinance codified in this chapter. Any establishments that open after the adoption of the ordinance codified in this chapter will have 30 days from the filing date on their city business license application to submit a shopping cart removal prevention plan to the neighborhood preservation division for approval. Every plan submitted shall be subject to the neighborhood preservation manager's approval.

If a plan is rejected as incomplete or inadequate, or if additional information is needed, the city shall notify the owner in writing. The owner has 30 days to submit the additional information or a complete or adequate plan.

The city may reject or deny a plan on any of the following grounds:

A. The plan fails to include the information required under this section or fails to adequately address the required elements.

B. The plan is insufficient, in the administrator's opinion, to prevent removal of carts.

C. Implementation of the plan violates this chapter, or state or federal law.

D. The owner knowingly makes a false statement or omits relevant facts in the plan, or in any amendment or attachment or report. (Ord. 1678 § 1, 2002)

8.18.100 Plan modification.

The owner may submit a plan modification of any previously approved shopping cart plan to address changed circumstances or to modify ineffective provisions. The administrator shall review and consider the modification in the same manner set forth in LMC 8.18.080 and 8.18.090. (Ord. 1678 § 1, 2002)

8.18.110 Revocation of plan.

The city may revoke an existing plan if:

A. A shopping cart has been found on public property on eight or more occasions within the past six-month period;

B. The owner has failed to comply with a provision of this chapter;

C. The owner has knowingly made a false statement or fails to disclose relevant information in an application, an amendment or in a report to the city.

Business owners whose plans have been revoked are subject to penalties as provided in LMC 8.18.120, 8.18.160, and 8.18.190. (Ord. 1678 § 1, 2002)

8.18.120 Penalties for failing to submit a prevention plan.

Any owner who fails to submit a plan, implement the proposed plan or implement any required modifications to the plan as required by the city, within the time frames as specified in this chapter, shall incur a penalty of \$50.00 for each day of non-compliance. (Ord. 1678 § 1, 2002)

8.18.130 Authority to impound.

Pursuant to California Business and Professions Code Section 22435.7, the city may impound any abandoned shopping cart when the shopping cart has a sign affixed as required by LMC 8.18.050. The city may retrieve and immediately dispose of any abandoned shopping carts that lack the signs required by LMC 8.18.050. (Ord. 1678 § 1, 2002)

8.18.140 Notification for retrieval of abandoned carts.

Pursuant to Business and Professions Code Section 22435.7, the city shall notify the owner as identified on the signage information permanently affixed to the cart of any abandoned carts owned or used by the business establishment that have been located within the city of Livermore within 24 hours of impoundment. The city notification shall be documented and provided by telephone to the designated person listed on the theft prevention plan and followed up by written notice.

The owner shall have three business days from the date the notification is given to retrieve carts from the city. The notice will inform the owner of the location where the shopping cart may be claimed. (Ord. 1678 § 1, 2002)

8.18.150 Authority to store.

The shopping cart shall be stored by the city at a location that is reasonably convenient to the owner of the shopping cart and is open for business at least six hours of each day, Monday through Friday. However, the city shall not be liable by any party for any damage to a stored shopping cart. (Ord. 1678 § 1, 2002)

8.18.160 Administrative costs and fines.

Pursuant to Business and Professions Code Section 22435.7, any owner that fails to retrieve its abandoned cart(s) within three business days after receiving notice from the city shall pay the city’s administrative costs for retrieving the cart(s) and providing the notification to the owner. The abandonment of any such shopping cart so retrieved within the three-day period shall not be deemed an occurrence for purposes of prosecution or imposition of administrative costs and fines which otherwise would be applicable. Any owner who fails to retrieve abandoned carts in accordance with this chapter in excess of three times during a specified six-month period shall be subject to a \$50.00 fine for each occurrence. An occurrence includes all carts owned by the owner that are impounded by the city in a one-day period. (Ord. 1678 § 1, 2002)

8.18.170 Disposal of abandoned shopping carts.

Pursuant to state law, any cart not reclaimed from the city within 30 days after notification to the owner shall be sold or otherwise disposed of by the city. (Ord. 1678 § 1, 2002)

8.18.180 Emergency services.

Pursuant to subdivision (c) of Business and Professions Code, Section 22435.7, the neighborhood preservation manager or any city officer, employee, or agent may immediately retrieve any shopping cart from public or private property if its location impedes emergency services. (Ord. 1678 § 1, 2002)

8.18.190 Enforcement.

Any person who violates the provisions of this chapter is subject to any enforcement procedures permitted by law, including but not limited to: prosecution of a misdemeanor or an infraction, civil action for injunction, administrative enforcement procedures, and revocation of a use permit if applicable. (Ord. 1678 § 1, 2002)

Chapter 8.19

RIGHT TO DOWNTOWN OPERATIONS

Sections:

- 8.19.010 Purpose and intent.
- 8.19.020 Definitions.
- 8.19.030 Downtown operations deed notification requirements.
- 8.19.040 Notification to transferees.
- 8.19.050 Notice of right to downtown operations.
- 8.19.060 Properly operated downtown operations not a nuisance.
- 8.19.070 Resolution of disputes.
- 8.19.080 Designated information contact person.

8.19.010 Purpose and intent.

The purpose of this chapter is to:

A. Notify property owners, tenants and users of property within the downtown specific plan area of the vibrant, active downtown environment, the revitalization efforts and public improvements occurring downtown, the special events and community and business activities that are part of the vitality of the downtown, and the expectations and responsibilities associated with owning, purchasing, renting or making other use of property within a vibrant, active downtown environment;

B. Protect all permitted uses from potential conflicts with one another due to the inherent impacts and inconveniences associated with permitted operations in the downtown specific plan area;

C. Promote a good neighbor policy between uses operating in the downtown specific plan area by advising purchasers, tenants and users of property of the potential impacts associated with such purchase, occupation, operation or use including, but not limited to, sounds, odors, traffic, light and glare, pedestrian activity, music, festivals, street construction and closures, traffic rerouting, railroad operations, outdoor sales, trash and recycling collection activities, 24-hour activity and other permitted uses that may occur within the downtown specific plan area, so that such purchasers, tenants and users will understand, acknowledge, and be prepared to accept, such impacts;

8.19.020

D. Encourage the use of dispute resolution, rather than expensive court proceedings, to amicably resolve any complaints about downtown operations; and

E. Promote ongoing communication between all property owners, tenants and users of property within the downtown specific plan area. (Ord. 1711 § 1, 2004)

8.19.020 Definitions.

For the purpose of this chapter, the following terms shall have the following meanings:

A. "Downtown operations" means any activity, use, facility or operation associated with a permitted temporary or permanent use occurring within the boundaries of the downtown specific plan, as well as any lawful public uses. Downtown operations and their associated impacts include, but are not limited to, the following:

1. Music, dancing, singing, and voices associated with permitted uses and downtown activities;
2. Odors associated with operation of restaurants and other businesses;
3. High levels of traffic and traffic congestion;
4. Increased vehicular traffic from special events and other activities;
5. Street construction, closures and traffic re-routing, including exclusion of vehicle access during certain times due to festivals, parades or other special events;
6. Railroad operations, including increased rail activity associated with passenger rail operations;
7. Outdoor sales of merchandise and outdoor restaurant seating;
8. Festivals, parades and/or cultural events which may result in gatherings of large groups of people, street closures, parking impacts, noise, odors and other impacts;
9. Increased levels of pedestrian activity;
10. Operation of delivery trucks and vans, trash and recycling collection trucks, and other such vehicles;
11. Impacts associated with artists' studios and spaces, including noise, odors, and vibration;
12. General increases in activity levels occurring on a 24-hour basis, including increases

in noise and other impacts during late night and early morning hours;

13. High levels of nighttime lighting and illumination;

14. Trash collection, including trash collection before 6:00 a.m.

B. "Downtown specific plan area" means the land within the boundaries identified by the Livermore downtown specific plan, adopted by the city council by Ordinance No. 1710.

C. "Property" means any real property located within the Livermore downtown specific plan area limits, including property intended for residential, commercial, business, public purposes and other uses.

D. "Tenant" means any renter or leasee of property.

E. "Transfer" means the sale, lease, trade, exchange, rental or gift of property.

F. "Transferee" means any buyer or tenant of property.

G. "Transferor" means the owner and/or transferor of title of real property or seller's authorized selling agent as defined in Business and Professions Code Section 10130 et seq., or Health and Safety Code Section 18006, or a landlord/sublessor leasing or renting real property to a tenant. (Ord. 1711 § 1, 2004)

8.19.030 Downtown operations deed notification requirements.

A. As a condition of approval of any discretionary development permit, including, but not limited to, tentative subdivision and parcel maps, conditional use permits and zoning use permits relating to property located within the downtown specific plan area, every property owner shall record the deed notification provided in LMC 8.19.050 on the property for which the discretionary development permit is issued.

B. The notice of right to downtown operations shall be included in all subsequent deeds and leases for this property until such time as the property is no longer located within the downtown specific plan area. (Ord. 1711 § 1, 2004)

8.19.040 Notification to transferees.

Every transferor of property, as transferor is defined herein, subject to the requirements of LMC 8.19.030 shall, upon transfer, also provide to any

transferee the notice of right to downtown operations recited in LMC 8.19.050. The notice of right to downtown operations may be contained in any form of agreement or contract; however, the notice need be given only once in any transaction. The transferor and transferee shall provide each other with written acknowledgement of delivery and receipt of the notice. (Ord. 1711 § 1, 2004)

8.19.050 Notice of right to downtown operations.

A. The notice provided in this subsection is intended to advise property owners, tenants and users of property within the downtown specific plan area of the inherent impacts and inconveniences associated with purchase, tenancy or use of property in the downtown specific plan area. This notice shall be provided as required by LMC 8.19.030 and 8.19.040.

NOTICE OF RIGHT TO
DOWNTOWN OPERATIONS

The City of Livermore permits the operation of a variety of residential, business, cultural, civic and other activities within the downtown specific plan area.

You are hereby notified that the property you own, are renting, leasing, using, occupying or acquiring an interest in is located within the downtown specific plan area. You may be subject to impacts, including inconvenience and discomfort, from lawful activities occurring within the downtown specific plan area. Impacts may include, but are not limited to: Noise from music, dancing and voices associated with permitted downtown uses and activities, odors associated with restaurants, business operations and special events, traffic congestion, street closures and traffic rerouting, exclusion of vehicle access to certain areas during special events, increased pedestrian activity, trash and recycling collection, including trash and recycling collection before 6 a.m., railroad operations, including rail activity associated with passenger rail operations, outdoor sales of merchandise and outdoor restaurant seating, festivals, parades and other civic and cultural activities, generally high activity levels occurring on a 24-hour basis, including impacts during late night and early morning hours, high levels of lighting and illumination, and noise and other impacts associated with the operation of any permitted use located in the downtown specific plan area.

One or more of the inconveniences described above may occur as a result of downtown operations and activities which are in compliance with existing laws and regulations and accepted customs and standards. If you own, lease, rent or otherwise utilize property within the downtown specific plan area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of owning, living in, operating a business in, or otherwise utilizing an area with a vibrant downtown character.

The City of Livermore's Right to Downtown Operations Ordinance does not exempt downtown businesses or other participants in downtown activities from compliance with the law. Should any business or person not comply with appropriate state, federal or local laws, legal recourse may be possible by, among other ways, contacting the appropriate agency.

This notification is given in compliance with Livermore Municipal Code, Chapter 8.19.

B. The failure to give the notice required by this section shall not invalidate any transfer. (Ord. 1711 § 1, 2004)

8.19.060 Properly operated downtown operations not a nuisance.

Downtown operations shall not be considered a nuisance under this chapter unless such operations are deemed to be a nuisance under California Civil Code Section 3479. Downtown operations shall comply with all state, federal and local laws and regulations applicable to the operations, including applicable noise and other operational standards contained in the general plan and/or downtown specific plan. (Ord. 1711 § 1, 2004)

8.19.070 Resolution of disputes.

Any dispute or controversy that arises regarding inconveniences or discomforts occasioned by downtown activities, operations, facilities, or uses should be settled by direct negotiation of the parties involved. Any such dispute or controversy that cannot be settled by direct negotiation of the parties involved should be submitted to a private mediator, a community mediation service, or another agency which provides dispute resolution services prior to the filing of any court action. Any

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costs associated with negotiation, mediation or dispute resolution pursuant to this section shall be borne by the parties. (Ord. 1711 § 1, 2004)

8.19.080 Designated information contact person.

Every developer or owner of commercial, residential, or other property within the downtown specific plan area, consisting of two or more residence, business or tenant spaces, shall, as a condition of approval of any discretionary development permit (including, but not limited to, tentative subdivision and parcel maps, conditional use permits and zoning use permits) relating to property located within the downtown specific plan area, designate an information contact person. The information contact shall be available to disperse information distributed by the city or other public or quasi-public organizations, to tenants or property owners within the development. The information contact role may be undertaken by the property owner, a homeowner's association, a property management company or other similar organization. (Ord. 1711 § 1, 2004)

Chapter 8.20

DISPOSABLE FOODSERVICE WARE

Sections:

- 8.20.010 Purpose.
- 8.20.020 Findings.
- 8.20.030 Definitions.
- 8.20.040 Standards for compliance.
- 8.20.050 Implementation.
- 8.20.060 Exemptions.
- 8.20.070 Enforcement and penalties.

8.20.010 Purpose.

To promote environmental and economic health in the city of Livermore, it is essential that the city take steps to reduce litter and harmful materials from the environment. An immediate and meaningful way to do this is to prohibit the use of expanded polystyrene disposable foodservice ware by food vendors, and to require food vendors to use disposable foodservice ware that is either recyclable or compostable. (Ord. 1919 § 1 (Exh. A), 2010)

8.20.020 Findings.

The city council of the city of Livermore finds that:

A. The city of Livermore has a duty to protect the natural environment and the health of its citizens.

B. Expanded polystyrene litters city storm drains, streets, creeks, parks, and other public places. Expanded polystyrene in the environment may become part of the food chain, resulting in negative impacts to wildlife.

C. Banning expanded polystyrene disposable foodservice ware in the city of Livermore will help address pollution by requiring the use of compostable or recyclable alternatives while helping educate business owners and citizens about the positive impact their packaging choices can make.

D. There is currently no economically feasible means of recycling polystyrene disposable foodservice ware in the city of Livermore.

E. Due to these concerns, a number of California cities have banned expanded polystyrene disposable foodservice ware, and many local businesses and several national corporations have successfully replaced expanded polystyrene disposable foodservice ware.

F. The city's goal is to replace expanded polystyrene disposable foodservice ware with alternative products that are compostable or recyclable. (Ord. 1919 § 1 (Exh. A), 2010)

8.20.030 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. "ASTM standard" means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for compostable plastics, as those standards may be amended.

B. "Compostable" means that all materials in the product or package will biodegrade or otherwise become part of usable compost (e.g., soil conditioning material, mulch) in an appropriate composting program or facility. Compostable disposable food service ware includes ASTM standard bio-plastics (plastic-like) products that are clearly labeled.

C. "Disposable foodservice ware" means single-use disposable products used by food vendors for serving or transporting prepared and ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers. This definition does not include single-use disposable straws, utensils or cup lids.

D. "Expanded polystyrene" means a thermoplastic petrochemical material utilizing the styrene monomer, marked with recycling symbol No. 6, processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene), sometimes referred to as Styrofoam, a Dow Chemical Company trademarked form of polystyrene foam insulation. In foodservice, expanded polystyrene is generally used to make cups, bowls, plates, trays, and clamshell containers.

E. "Food vendor" means any establishment located within the city of Livermore, or any establishment which provides prepared food or beverages for public consumption within the city of Livermore, including but not limited to any store, supermarket, delicatessen, restaurant, retail food

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vendor, sales outlet, shop, cafeteria, catering truck or vehicle, sidewalk or other outdoor vendor, or caterer.

F. "Prepared food" means any food or beverage prepared for consumption using any cooking, packaging, or food preparation technique by a food vendor. "Prepared food" does not include uncooked meat, fish, poultry, or eggs unless provided for consumption without further food preparation.

G. "Recyclable" means any material that is accepted by the city of Livermore recycling program, including, but not limited to, paper, glass, metal, cardboard, and plastic. (Ord. 1919 § 1 (Exh. A), 2010)

8.20.040 Standards for compliance.

Except as provided in LMC 8.20.060, Exemptions, all food vendors within the city of Livermore which are currently offering, or which will offer, disposable foodservice ware shall provide disposable foodservice ware that is either recyclable or compostable. (Ord. 1919 § 1 (Exh. A), 2010)

8.20.050 Implementation.

A. The public works director, or his or her designee, shall within six months of effective date of the ordinance codified in this chapter promulgate any rules and regulations necessary or appropriate to achieve compliance with the requirements of this chapter.

B. The rules and regulations promulgated by the public works director, or his or her designee, pursuant to this section shall provide for at least the following:

1. Except as provided in LMC 8.20.060, Exemptions, all food vendors are prohibited from providing prepared food in disposable foodservice ware made from expanded polystyrene. (Ord. 1919 § 1 (Exh. A), 2010)

8.20.060 Exemptions.

A. The environment and energy committee shall have the responsibility to grant waivers or exemptions from the requirements of this chapter.

B. Application for Exemption. If a food vendor can demonstrate undue hardship resulting from compliance with the provisions of this chapter, or that a container required by the food vendor is only

available in expanded polystyrene, then the food vendor may apply, in writing, for a one-year exemption from compliance.

C. Meeting with the Environment and Energy Committee. The environment and energy committee will review the application for exemption, and may meet with the applicant to discuss possible ways of meeting the requirements of this chapter.

D. Granting of Exemption. If the environment and energy committee determines that compliance with the provisions of this chapter would cause the food vendor to experience undue hardship, or that a non-expanded-polystyrene version of a necessary container is not available, then the environment and energy committee shall grant the food vendor a one-year exemption. At the end of the one-year exemption, the food vendor will be required to comply with this chapter or submit another exemption application to be reviewed by the environment and energy committee.

E. Prepackaged Foods. Foods prepackaged outside the limits of the city of Livermore are exempt from the provisions of this chapter, but the purveyors of foods prepackaged outside of the limits of the city of Livermore are encouraged to follow these provisions. This exemption does not apply to food vendors as defined, including caterers which provide prepared food for public consumption within the city of Livermore.

F. Emergency Supplies or Services Procurement. Food vendors shall be exempt from the provisions of this chapter, in a situation deemed by the city council or city manager to be an emergency for the immediate preservation of the public peace, health or safety. (Ord. 1919 § 1 (Exh. A), 2010)

8.20.070 Enforcement and penalties.

A. Written Warning. If a food vendor is found to be in violation of this chapter, the public works director or his or her designee shall issue a written warning to the food vendor.

B. Penalties for Violation. If after issuing a written warning of violation, the food vendor continues to be in violation of this chapter, an authorized enforcement officer, pursuant to LMC Chapter 1.20, Administrative Citations, shall issue citations in the following amount:

1. One hundred dollars for the first administrative citation following a written warning;

2. Two hundred dollars for a second violation within six months of the previous administrative citation;

3. Five hundred dollars for the third and each subsequent violation.

C. Additional Penalties. Additional penalties for administrative costs, late payment changes, compliance reinspections, and collection costs may be assessed pursuant to Chapter 1.20 LMC. (Ord. 1919 § 1 (Exh. A), 2010)

